



Human Rights Commission

2021-2022

The State of Human Rights in Zambia

"All human beings are born free and equal in dignity and rights"



www.hrc.org.zm



Human Rights Commission

The State of Human Rights in Zambia: 2021 – 22

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Foreword

The State of Human Rights in Zambia 2021 - 2022

Dear Stakeholders,

I am once again delighted, on behalf of the Human Rights Commission and indeed on my own behalf, to present to you the combined State of Human Rights Report for 2021 and 2022.

The State of Human Rights remains an indispensable tool for the promotion and protection of human rights. It mirrors to us the background information regarding high level State commitments to protect, respect and fulfil human rights but most importantly, efforts expended by the duty bearers to demonstrate those commitments in practice. The assessment further provides insights into real changes happening on the ground in terms of protection, respecting (observance), fulfilment and enjoyment of these fundamental rights.

In assessing implementation of these State obligations, the study maintained its three-level approach. At a higher level (structural), the assessment examined changes if any in State commitments through ratification and/or accession to new or existing international and regional human rights instruments. Second, at middle or process level, the assessment looked at measures taken to domesticate and implement provisions into national law, policy and institutional arrangements to protect and promote human rights. Third, at outcome or lower level, the assessment sought to identify and highlight changes resulting from implementation of measures to bring into effect international or regional human rights commitments.

The Commission remains steadfast in implementing its mandate including engaging stakeholders on issues highlighted in this report. For example, steps are already being taken to bring back on the legislative chain the proposed bill to criminalise acts of torture.

The Commission is also continuing engagements with the State to systematically implement outcomes from previous Universal Periodic Review meetings including acceding to many optional protocols to most ratified instruments to further enhance promotion and protection of human rights. We ask stakeholders including the State not to relent and continue matching on to a future where every human being in our jurisdiction will enjoy their fundamental rights entitlement without discrimination, on any grounds as envisaged under the International Bill of Rights. Some of the issues highlighted in this report have continued appearing in the State of Human Rights Report for some time and the question begging for answers is, why are some of these pertinent human rights issues not being resolved? What do we need to do collectively do, to get them resolved?

I wish to encourage all of you to use this Report as an inspiration and as a basis for development and implementation of sound and meaningful interventions that will bring meaningful change to our country's human rights landscape.

I thank you.



Dr. Pamela T. Sambo

**Vice Chairperson
HUMAN RIGHTS COMMISSION**

Acknowledgment

This State of Human Rights Report is the second consecutive production under the support of GIZ. It demonstrates a growing partnership anchored on trust and belief that this is an important document and tool for human rights transformation.

The 2021 -2022 State of Human Rights Report is also the second consecutive report being produced internally without use of consultants. This also demonstrates growing confidence in our institutional capabilities to undertake high level research despite constraints in resources including staff levels.

The Human Rights Commission wishes to express heartfelt gratitude to all those stakeholders both State and Non- State Actors that participated in this study, for their valuable information, which resulted into the production of this report. Sincere gratitude is extended to the Management and Staff both from Headquarters and Regional offices for their effort in collecting information and subsequent production of this report.

Further, the Commission pays special appreciation and gratitude to GIZ for being an all weather partner and particularly, for continuing rendering financial support in the production of the State of Human Rights Report.



Sindiso Ngatsha Sichone (Mrs.)

Executive Director
HUMAN RIGHTS COMMISSION

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Acronyms

ACHPR	African Charter on Human and People's Rights
AIDS	Acquired Immune Deficiency Syndrome
ASHRR	Annual State of Human Rights Report
CED	Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CPC	Criminal Procedure Code
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DPP	Director of Public Prosecutions
ESIA	Environmental and Social Impact Assessment
GBV	Gender Based Violence
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
HEPs	Persons Detained at the President's Pleasure
HRC	Human Rights Commission
IBA	Independent Broadcasting Authority
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
LASF	Local Authorities Superannuation Fund
LEA	Law Enforcement Agency
MCDSS	Ministry of Community Development and Social Services

MISA	Media Institute of Southern Africa
NAPSA	National Pension and Scheme Authority
NGOs	Non-governmental Organisations
NHRI	National Human Rights Institution
NMIRF	National Mechanism for Implementation Reporting and Follow up
NPA	National Prosecutions Authority
OHCHR	Office of the High Commission on Human Rights
POA	Public Order Act
PSPF	Public Service Pensions Fund
PwD	Persons with Disabilities
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SMRTP	Standard Minimum Rules for the Treatment of Prisoners
SRHR	Sexual Reproductive and Health Services
SW	Social Welfare
TCLC	Tripartite Consultative Labour Council
UDHR	Universal Declaration of Human Rights
UNCAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or punishment
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on drugs and Crime
UPR	Universal Periodic Review
WCFB	Workers Compensation Fund Board
ZAPD	Zambia Agency for Persons with Disabilities

Glossary of Terms

Accession: is the act whereby a State that has not signed a treaty expresses its consent to become a party to that treaty by depositing an “instrument of accession”.

Accountability: a process which requires government to show, explain and justify how it has fulfilled its obligations to the people.

Act - a single piece of movement or action, usually involving force. Usually, an act is committed by a person (an individual or a group) against another, in which case it is referred to as an act of commission. Act can also mean the non-performance of an expected or required movement or action, in which case it is referred to as an act of omission. Police Bond: is a promise in writing by an accused person to avail himself or herself as and when him or her is required to appear before a court of law. It is given at the discretion of the Officer in Charge of a Police station upon meeting required prerequisites or conditions.

Bail: Bail is the conditional release of an accused or convicted person at the discretion of the court pending further court proceedings with the understanding that the released person will turn up at court as and when he or she is required to do so.

Bill of rights: a statement in a constitution of human or civil rights that lists protections against interference by governments. Also see International Bill of Human Rights.

Civil and Political Rights: The rights of citizens to liberty and equality; sometimes referred to as first generation rights. Civil rights include freedom to worship, to think and express oneself, to vote, to take part in political life, and to have access to information discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Committal: is the determination whether, in the case of more serious criminal offences, there is sufficient evidence to require the defendant to stand trial before a competent court.

Constitution: a set of laws by which a country or organisation is governed. In the majority of countries, the constitution is written down and agreed as the supreme law of land; it lays down the foundation for the state and its political system. About four countries do not have a written constitution; here the law develops through legal judgements and precedents.

Death penalty: the sanctioned taking of life by the state as a punishment for a crime

Discrimination: means directly or indirectly treating a person differently on the basis of that person's birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, tribe, pregnancy, health, or marital, ethnic, social or economic status;

Gender-Based Violence: any physical, mental, social or economic abuse against a person because of that person's gender

General Comments: A treaty body's interpretation of the content of human rights provisions either related to a specific article or to a broader thematic issue. General comments often seek to clarify the reporting duties of States parties with respect to certain provisions and suggest approaches to implementing treaty provisions.

Human rights standards: internationally negotiated or endorsed human rights instruments, whether these are binding or not binding. Binding documents codify or create legal obligations or duties (“hard law”), while non-binding documents make recommendations about norms of conduct and policy (“soft law”).

Human Rights Systems: Refers to a wide range of human rights mechanisms at

international, regional and national level involved in the promotion and protection of human rights.

Human rights violation: an act of commission or omission by the State or by parties insufficiently regulated by the State (Non-State entities).

Human Rights: can be defined as “universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity.

Inalienable: Refers to rights that belong to every person and cannot be taken from a person under any circumstances.

Independent: Refers to the complimentary framework of human rights law. For example, your ability to participate in your government is directly affected by your right to express yourself, to get an education, and even to obtain the necessities of life.

Indivisible: Refers to the equal importance of each human rights law. A person cannot be denied a right because someone decides it is less important or non-essential.

Justice Delivery System: is made up of mainly the (i) Criminal Justice, which includes investigating agencies such as police, prosecution, defendants and courts (ii) Civil Justice, which includes plaintiffs, respondents, government machinery and courts.

Mandela Rules: These are Rules that are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment. They offer detailed guidance on a wide variety of issues ranging from disciplinary measures to medical services.

Optional Protocol: is an international instrument linked to a principal instrument and imposes additional legal obligations on States that chose to accept them.

Persons with disabilities: include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Ratification: This is the act by which a country that has signed a treaty agrees to be formally bound by its obligations.

Reasonable Accommodation: means necessary and appropriate modification and adjustment not imposing a disproportionate or undue burden where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Suspect: is a known person accused or suspected of committing a crime

Social and Economic Rights: Rights that give people social and economic security, sometimes referred to as security-oriented or second-generation rights. Examples are the right to food, shelter, and health care. There is disagreement whether the government is obligated to provide these benefits

Torture: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on

Treaties, Conventions: are legally binding international and regional legal instruments for States that have ratified/acceded to them.

Universal Periodic Review (UPR): is a unique process which involves periodic peer review of the human rights performance records of all 193 UN Member States, usually every four to four and half years.

Executive Summary

Generally, the trajectory for protection and observance of human rights is indicating an improvement from the last few years. In terms of protection of human rights, the State has taken decisive measures through amendment and enactment laws. The abolition of the death penalty, which previous governments had failed to address, has finally been put to rest through amendment of among others, Section 69 of the Penal Code. The Act puts Zambia among progressive nations that respect and protect the sanctity of life. The State further amended relevant sections to remove provisions on defamation of the President, a provision that has been used previously to silence fierce critics of the President.

On 28th December, 2022, Zambia signed the prerequisite a declaration accepting the competence of the Court to receive cases under Article 5(3) of the Protocol. The signing of the declaration entitles relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34(6) of the Protocol.

The State enacted the Children's Code Act No. 12 of 2022. The Children's Code comprehensively domesticates the CRC and other international human rights standards relating to the rights of the child. Among the positives the Code brings is the amalgamation of protections of children's rights which were previously provided for under different pieces of legislation such as the Legitimacy Act, 1929, the Adoption Act, 1956, the Juveniles Act, 1956 and the Affiliation and Maintenance of Children Act, 1995. The Act reaffirms in the strongest terms the need to treat Children in a manner that puts the interests of the child first. Under the new law it is mandatory to grant them bail immediately after arrest and the requirement not to hold them in custody. It also creates the Children's Court, specialized in dispensing child justice. These legal reforms trend need to continue. Other laws such as the Cyber Security and Cyber Crimes Act No 2 of 2021, Public Order Act, legislation to criminalise torture need to be repealed/amended and or enacted to further protect human rights.

However, despite these positives a number of issues remain and casts a gloom shadow over the country. Secure protection of the law remains a problem. Despite the policy directive given by the President on treatment of suspects: that they should only be arrested when investigations have thoroughly been conducted and be brought before Courts of competent jurisdiction, there has been strong resistance by the Police. Police have continued arresting people while investigations are still ongoing. Many people who have been arrested stay for many days, weeks and months before being taken before Courts of law. Incidents of torture are still as rife as before. Police respect for human dignity is non-existent. There is need to institute a mindset change in the Police and bring about a Police service working to serve the people and protect their rights and not to take away their rights.

1.0 INTRODUCTION

1.1 The Human Rights Commission

The Human Rights Commission (HRC) is a National Human Rights Institution established pursuant to Article 230 of the Constitution of Zambia Act No 2 of 2016 with a broad mandate of protecting and promoting Human Rights.

The Constitution under Article 230(2) and (3) specifically mandates the Human Rights Commission to;

- (i) Investigate and report on the observance of rights and freedoms;
- (ii) Take necessary steps to secure appropriate redress where rights and freedoms are violated;
- (iii) Endeavour to resolve a dispute through negotiation, mediation or conciliation;
- (iv) Carry out research on rights and freedoms and related matters; and
- (v) Conduct civic education on rights and freedoms; and (vi) Perform such other functions as prescribed.

Further, the Human Rights Commission Act Chapter 48 of the Laws of Zambia in section 9 provides that the Commission shall investigate human rights violations;

- (i) Investigate any maladministration of Justice;
- (ii) Propose effective measures to prevent human rights abuse;
- (iii) Visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems;
- (iv) Establishing a continuing programme of research, education, information and rehabilitations of victims of human rights abuse to enhance the respect for and protection of human rights; and
- (v) Do all such things as are incidental or conducive to the attainment of the functions of the Commission.

All in all, the Commission's responsibility is to protect and promote human rights in Zambia as prescribed in the Bill of Rights, regional and international human rights conventions and protocols.

1.2 Objectives of the 2021 – 2022 State of Human Rights Report

The Commission operates on the basis of the Paris Principles of the 1993 which, among other things, requires National Human Rights Institutions (NHRIs) to carry out continuous research so that evidence-based advocacy can be made to government and other stakeholders. This advocacy is expected to translate into positive formulation and implantation of policies and programmes that convert international human rights standards into reality. The Commission therefore since the year 2007 has been conducting research-based monitoring of human rights culminating into the production of the Annual State of Human Rights Report (ASHRR). These reports have been showing the status of human rights in the country and provide endorsements to governments and other stakeholders for the interventions that align policies, legislation and administrative actions to subsisting human rights standards.

The 2021 -2022 ASHRR however is special in the sense that in its multi-thematic approach, it also encompasses the impact of Covid-19. The Covid 19 pandemic undesirably affected the provision of services and in turn affecting compliance of Human Rights in the nation hence need incorporate the exploration of impacts in regard to human rights. The 2021-2022 ASHRR thus acts as a baseline survey report for annual comparison of human rights performance with the following specific objectives;

1. To enable the Commission to fulfill its strategic objectives of positively influencing and monitoring development and observance of key national and international human rights standards by all stakeholders
2. To enable the wider public to understand the fundamental issues rights in Zambia
3. To create human rights awareness and stimulate debate on the issues highlighted in the report among decision makers.
4. To offer concrete policy recommendations to government, civil society and cooperating partners on how to improve the state of human rights in the country.
5. To allow for the design of specific follow up actions based on concrete engagement plans following the launch of the report
6. To create greater visibility and reinforce the position of the HRC in Zambia
7. To strengthen the research and analytical capabilities of the HRC
8. As a recurrent publication over several years, to offer a unique opportunity for Zambia to address its human rights issues in a comprehensive and holistic way
9. To monitor and evaluate human rights in Zambia in a more systematic way, in particular government's performance in the domestication of its international obligation

1.3 Methodology

Prior to the data collection exercise, a technical committee within the Commission was established to agree on the indicators to be used for measuring human rights performance in Zambia. This culminated in the development of data collection tools that were then tested and refined to meet the 2021-2022 ASHRR objectives.

The HRC collected both qualitative and quantitative data during the period January 2023 to March 2023 from all Provincial headquarters around the country and one (1) selected rural district in all Provinces. Questionnaires were administered to various State and Non-State Actors in line with the adopted themes of the 2021-2022 ASHRR. Questionnaires were also administered 678 inmates held in custody in the sampled districts for the purposes of determining access to Justice.

A mixed-methodology approach involving quantitative and qualitative methods of data collection and analysis was used to generate findings of the 2021-2022 ASHRR. Apart from primary data collected from sampled institution and individuals, secondary data was also collected from selected reports and publication from the stakeholders.

2. HUMAN RIGHTS IN CONTEXT

2.1 What are Human Rights?

Human rights are set out in international and domestic laws. International human rights law requires nation states to respect, protect and fulfil human rights, and to uphold the principle that 'all human beings are born free and equal in dignity and rights'.

They are standards that recognise and protect the dignity of human beings¹ regardless of race, gender, disability, culture, religion, social status, sex, political

¹ What are human rights? | UNICEF, <https://www.unicef.org/child-rights-convention/what-are-human-rights>

status and affiliation, opinion or nationality. They are universal guarantees protecting individuals or people against actions by their government or groups of individuals which may interfere with fundamental freedoms and human dignity.

2

Defining Human Rights

Human rights constitute a set of rights and duties necessary for the protection of human dignity, inherent to all human beings, irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Everyone is equally entitled to human rights without discrimination. As such, human rights are universal, interrelated, interdependent and indivisible and constitute the basis of the concepts of peace, security and development.

**Guidance note for
UNODC Staff 2011***

Human rights are universal, meaning that they apply to everyone. They are indivisible, meaning that all human rights have equal status. They are interdependent and interrelated, meaning the improvement of one human right can facilitate the advancement of others. Likewise, the deprivation of one right can also negatively affect other human rights.

It is important for the nation to uphold the freedoms and human rights of the people and individuals as it defines what people should expect the government to do for them and what the government should refrain from doing. Further, human rights define the responsibilities of the individual, groups of individuals and the government. Human rights and their protection, therefore, are crucial to political, economic, social and

cultural stability. They are also important to effective realisation of an environment where human beings achieve their potential. The respect of human rights also provides individuals can have an influence on governance and development process.

This means human rights are a necessity and not luxury for human beings. They are not earned and should not be denied. According to Article 1 of the UDHR “all human beings are born free and equal in dignity and rights.” They are endowed with reason and conscience and should act towards one another in the spirit of brotherhood.” The spirit of UDHR has constantly been developed in a responsive manner based on emerging issues and concretized by internationally agreed standards codified in conventions.

However, the enjoyment of fundamental rights and freedoms is not always absolute. There are sometimes derogations in exception of a few rights which remain absolute such as the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment, the right to be free from slavery or servitude, freedom of opinion and the right to be free from retroactive application of penal laws, which are to be enjoyed in absolute terms regardless of the situation such as war, state of emergency etc.

Nevertheless under international human rights law, State parties are allowed to invoke derogations under certain conditions. Some of those include situations of a “public emergency which threatens the life of the nation.” In such situations, a state of emergency must be publicly proclaimed according to domestic legal requirements, and should also be accompanied by notification to other State Parties (via the UN Secretary General or other body that serves as the technical secretariat of the treaty), explaining why it is necessary. Further, it is emphasized that derogations should be limited “to the extent strictly required by the exigencies of the situation.”

²2013 State of Human Rights in Zambia

2.2 Global Context

The global crusade on the promotion and protection of human rights is premised on the International Bill of Rights which is composed of the Universal Declaration on Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR) and its protocols; and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Based on the International Bill of Rights, there are also other binding treaties or conventions that have been developed to provide human rights standards that recognise the rights of specific groups of people in the society. These include Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Conventions against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT); Convention on the Elimination of All forms of Racial Discrimination (CERD); Convention of the Rights of the Child (CRC); Rome Statue- International Criminal Court Convention on the Rights of Persons with Disability (CRPD); etc

In the same vein, regional groupings such as African Union, European Union, Americas etc have developed human rights instruments that give effect to international norms though customising them to the belief and values of its people. For example; - the African Charter on Human and Peoples 'Rights and its respective protocol: the Protocol to the African Charter on Human and Peoples 'Rights on the Rights of Women in Africa (Maputo Protocol) and the African Charter on the Rights and Welfare of the Child, the SADC Declaration on Gender and Development and its addendum on the Eradication of Violence Against Women, African Charter on Democracy, Elections and Governance; Solemn Declaration on Gender Equity in Africa etc

Some instruments are supplemented by optional protocols that deal specific issues or allow people to make Complaints. For example, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict aims to protect children from recruitment and use in hostilities, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

When a State accepts to be legally bound by the provision in the treaty by signing, ratifying or acceding, they assume obligations and duties under the international law to respect, to protect and to fulfil human rights. This requires State Parties to create legal and administrative environment at national level in order to ensure that the provisions in instruments are implemented within their respective jurisdiction. This implies that governments like Zambia as State Party to various international and regional human rights instruments is required to respect, protect and fulfil human rights through her legal, policy and administrative measures.

In respecting human rights, the State is expected to refrain from interfering in the enjoyment of human rights. It should refrain from putting in place administrative, legal and policy measures that prevent people from enjoying their human rights. The State has a duty not to unduly hinder the exercise of their freedoms and rights.

The obligation to protect requires States to protect individuals and groups against human rights abuses. The State party should put in place administrative, legal and policy measures aimed at protecting individuals or groups from third parties that may deprive right-holders the opportunity to enjoy human rights. It includes enacting laws, adopting policies and including enforcement mechanisms to protect rights holders from human rights violations by third parties including businesses.

The obligation to fulfil means that States are required to take positive action to facilitate the enjoyment of basic human rights. Positive actions and measures may include; administrative measures such as creating institutions and systems that provide services, adequate budgetary allocation, judicial and other measures towards the full realisation of rights.

At international and regional level, implementation of human rights standards is monitored through treaty -based and charter-based monitoring mechanism or bodies.

2.3 The Charter Based Mechanism

The Charter Based Human Rights Mechanism is a human right mechanism whose creation stems from the UN Charter. The general characteristics of these mechanisms are such that they;

- Derive their establishment from provisions contained in the Charter of the United Nations
- Hold broad human rights mandates
- Address an unlimited audience
- Take action based on majority voting
- Assess the human rights situation against the benchmarks set out in all the human rights standards.

Among the common ones are the Universal Periodic Review (UPR) and Special Procedures or Mandate holders.

2.4 The Treaty Bodies

The human rights treaty bodies are committees of independent human rights experts, nominated and elected by State parties for a period of 4 years, renewable to another term of 4 years. Treaty bodies perform a number of functions in accordance with the provisions of the treaties that established them. The primary mandate, common to all treaty bodies, is to monitor the implementation of the relevant treaty by reviewing the reports submitted periodically by State parties.

Figure 1: Stages of Treaty Bodies Reporting

Under the mechanism, treaty bodies perform their role mainly by examining the following; -

- State Party Reports
- Individual complaints Mechanisms
- State to State (inter State) Complaints Procedures
- Country inquiries
- Generating General Comments

Treaty Bodies work is restricted to a particular treaty or instrument with guidance on the extent of mandate provided for in a particular instrument. Each of the treaty bodies publishes its interpretation of the provisions of its respective human rights treaty in the form of “general comments” or “general recommendations”.

These cover a wide range of subjects, from the comprehensive interpretation of substantive provisions, such as the right to life or the right to adequate food, to general guidance on the information that should be submitted in State reports relating to specific articles of the treaties.

General comments also deals with wider, cross-cutting issues, such as the role of national human rights institutions, the rights of persons with disabilities, violence against women and the rights of minorities.³

Zambia is a State party to all key human rights treaties except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

³www.ohchr.org/en/treaty-bodies/general-comments

Table 1: Status of Ratification

Treaty	Date of Signed	Date Ratification
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	11th October, 1968	4th February, 1972
International Covenant on Civil and Political Rights (ICCPR)		1984 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		1984(a)
Convention on the Rights of the Child (CRC)	30 th September, 1990	6th December, 1991
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP- AC)	29th September, 2008	
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC)	29th September, 2008	
Convention on the Rights of Persons with Disabilities		
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)		7th October, 1998 (a)
Optional Protocol of the Convention against Torture (CAT-OP)	27th September, 2010	
CRPD - Convention on the Rights of Persons with Disabilities	9th May, 2008	01st February, 2010

2.5 Periodic Reports to Human Rights Mechanisms

With Zambia having ratified and acceded to a number of human rights treaties, it assumed an obligation to respect, protect and fulfil human rights enshrined in the respective treaties through the implementation of appropriate legal, policy, budgetary and administrative measures. Further, in the interest of monitoring compliance, every treaty has systems that require State Party to periodically submit reports providing details on the efforts being made by the country in the promotion and protection of the rights and standards enshrined in a particular treaty. The report is expected to provide adequate information to help the committee assess how a country is progressing on the realisation of human rights, and to provide appropriate guidance or recommendation(s) based on what was observed as deficiencies on the part of the State party in the promotion and protection of human rights.

In the preparation of the report, the State is expected to carry out extensive consultation that is inclusive in nature by involving both State and Non- State actors. Therefore, the reporting process should encourage and facilitate, at the national level, public participation, public scrutiny of State policies, laws and programmes, and constructive engagement with civil society in a spirit of cooperation and mutual respect, to advance the enjoyment by all of the rights protected by the relevant treaty.

Despite, Zambia being a signatory to most of the human rights treaties, she has been struggling to regularly submit reports to the treaty bodies and other human rights mechanism when they fall due. According to the Office of the High Commissioner on Human Rights (OHCHR) compilation, there were four reports that were overdue.⁴

Table 2: Summary of Periodic Reports Submission to Mechanisms

State Party	Number of Initial reports overdue	Number of Periodic reports overdue	Total number of overdue reports (initial and periodic)	Number of reports which are overdue for less than 5 years	Number of reports which are overdue between 5 and 10 years	Number of reports which are overdue for more than 10 years
Zambia	1	3	4	0	3	1
Total	1	3	4	0	3	1

Failure to comply with human rights monitoring mechanisms, has a negative impact on accessing whether a nation is taking steps in respecting, protecting and fulfilling its obligations in the human rights discourse. It is reporting that is capable of stimulating compliance with human rights standards by the State. The report provides international communities with information on the challenges that a country is facing in its quest to uphold human rights in the country.

As a way to strengthen the existing national mechanism for coordination, implementation, reporting and follow-up in the country, a National Mechanism for Implementation, Reporting and Follow Up (NMIRF) was created. However, despite establishment of the mechanism, it is yet to be operationalised, thereby negatively impacting the implementation of recommendations from human rights mechanisms, tracking and reporting on progress made.

Recommendation:

- *The State should operationalise the National Mechanism for Implementation, Reporting and Follow Up mechanism to strengthen national coordination mechanism for implementation, reporting and follow-up including developing an action plan to implement all recommendations from human rights mechanisms.*
- *Accelerate effective domestication of international human rights instruments to which it is a party.*
- *The State must ratify or accede to all the remaining core human rights treaties and optional protocols including those committed to during the recent UPR for Zambia.*
- *Amend the Ratification of International Agreements Act No. 34 of 2016 to establish a National Mechanism for Implementation, Reporting and Follow Up and provide for legal mandate and function for the mechanism.*

⁴https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/LateReporting.aspx

3. OVERVIEW OF HUMAN RIGHTS PROTECTION IN ZAMBIA

Zambia, like many other countries, has ratified/acceded to many international and regional human rights treaties. By virtue of being a State Party, Zambia is expected put in place administrative, legal and policy measures that give effect to the provisions in the instruments. And periodically, Zambia is expected to submit reports to relevant human rights monitoring mechanisms on implementation of provisions in the instruments as per intervals set out in each treaty. The purpose of reporting is to provide information to assist the treaty body or the mechanism to assess progress in implementing human rights standards and provide evidence-based recommendations on how to improve the situation to the State Party.

Over the years, Zambia like many other countries in the world has faced challenges in regularly reporting as required in the instruments. As a result, there are a number of State Party Reports which are overdue. Where submissions have been made, reports for different intervals have been combined in one. Zambia has only been consistent in the submission of reports to Working Group on the Universal Periodic Review. The recent report being the report for the 4th Cycle of the Universal Periodic Review which was submitted in October, 2022. This is regardless of enactment of the Ratification of International Treaties Act No. 34 of 2016 which decentralised State Party Reporting to responsible ministries.

The Bill of Rights in the Constitution does not refer to international human rights instruments as sources of law in Zambia. Article 7 of the Constitution of Zambia states that the Laws of Zambia consist of (a) this Constitution; (b) Laws enacted by Parliament; (c) statutory instruments; (d) Zambian customary law which is consistent with this Constitution; and (e) the laws and statutes which apply or extend to Zambia, as prescribed. As such, Zambia is considered a dualist country, in which international human rights instruments or conventions and domestic laws are viewed as two separate legal systems. This implies that international instruments are not self-executing but need to be domesticated through an Act of Parliament to have legal effect. Even when Zambia has ratified a particular treaty, the provisions are of no legal effect in the country unless and until they are embedded or domesticated in domestic legislation.

The Constitution of Zambia is the supreme law and is also a point of reference on the protection and promotion of human rights. In its preamble, the Constitution of Zambia pledges to uphold human rights and fundamental freedoms of every person. It confirms the equal worth of women and men and their right to freely participate in, determine and build a sustainable political, legal, economic and social order⁵. These Fundamental Freedom and Rights are codified as the Bill of Rights under Part III of the Constitution. However, only human rights classified as Civil and Political Rights are covered in the Constitution of Zambia while Economic, Social and Cultural Rights are not. This implies that only Civil and Political Rights are justiciable before the courts in Zambia, and yet human rights by nature are interrelated and interdependent. Effective realisation of human rights depends wholly or partly on the realisation of other human rights. For instance, the right to life cannot be fulfilled without the right to food which is not provided for under the Bill of Rights. Therefore, realisation and enjoyment of these rights has always depended on subsidiary laws of the country.

As part of domesticating international and regional human rights agreements, the State has established institutions such the Human Rights Commission and other oversight institutions like the Police Public Complaint Commission; Judicial Complaint Commission; Zambia Agency for Persons with Disability, Gender Division etc. And also creating an enabling environment for Civil Society Organisation (CSO) to flourish in the promotion of human rights in the country.

⁵The Constitution of Zambia Chapter 1 of the Laws of Zambia

4. STATE OF HUMAN RIGHTS IN ZAMBIA - 2021 & 2022

4.1 Human Rights Complaints Recorded by the Commission

During the period under review, a number of human rights violations and abuses were reported to the Commission. These violation and abuses included all categories of human rights thus, Civil, Political, Economic, Social, Cultural Rights and group rights. Though 2021 was characterised by Covid-19 restrictions, the Commission received and investigated a total number of 874 cases. Of the cases received, **631** complaints were reported by male complainants while **243** were made by female complainants. In 2022, the Commission received and investigated a total of **2123** cases with **455** made by females and **1664** received from males. In terms of trends, the profile of complaints depicts a continued reduction in number of complaints from 2018 to 2021, during which COVID - 19 disrupted movements for both Commission staff and complainants being able to reach out to receive and process complaints. Complaints received through outreach programmes constitute almost half of complaints the Commission records.

Figure 2: Complaints trends 2018 - 2022

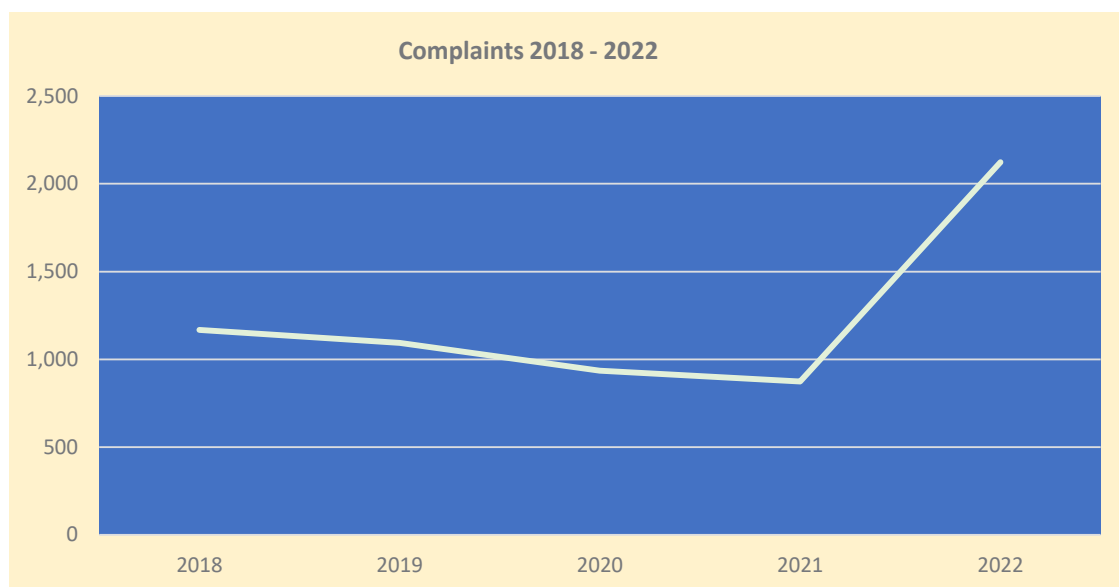
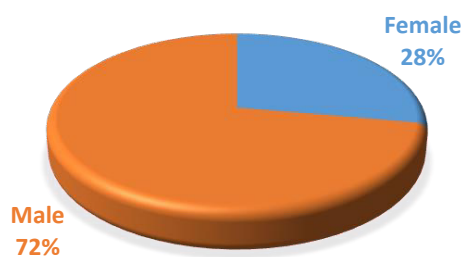


Figure 3 Gender Compositions of Complaints Received in 2021 & 2022

Complaints by Gender- 2021



Complaints by Gender- 2022

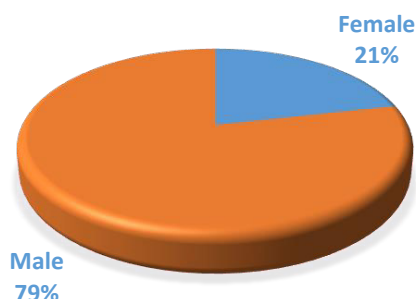


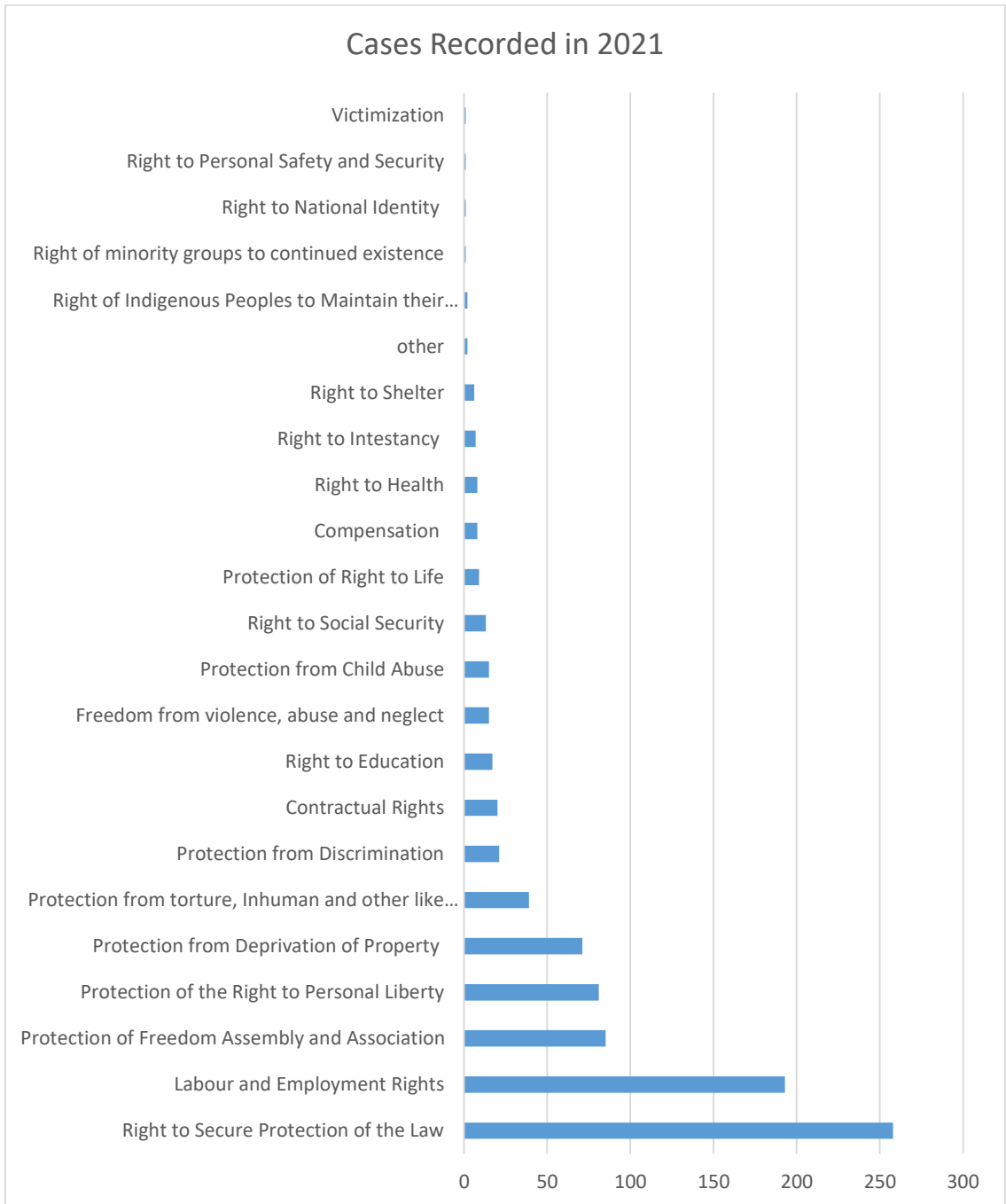
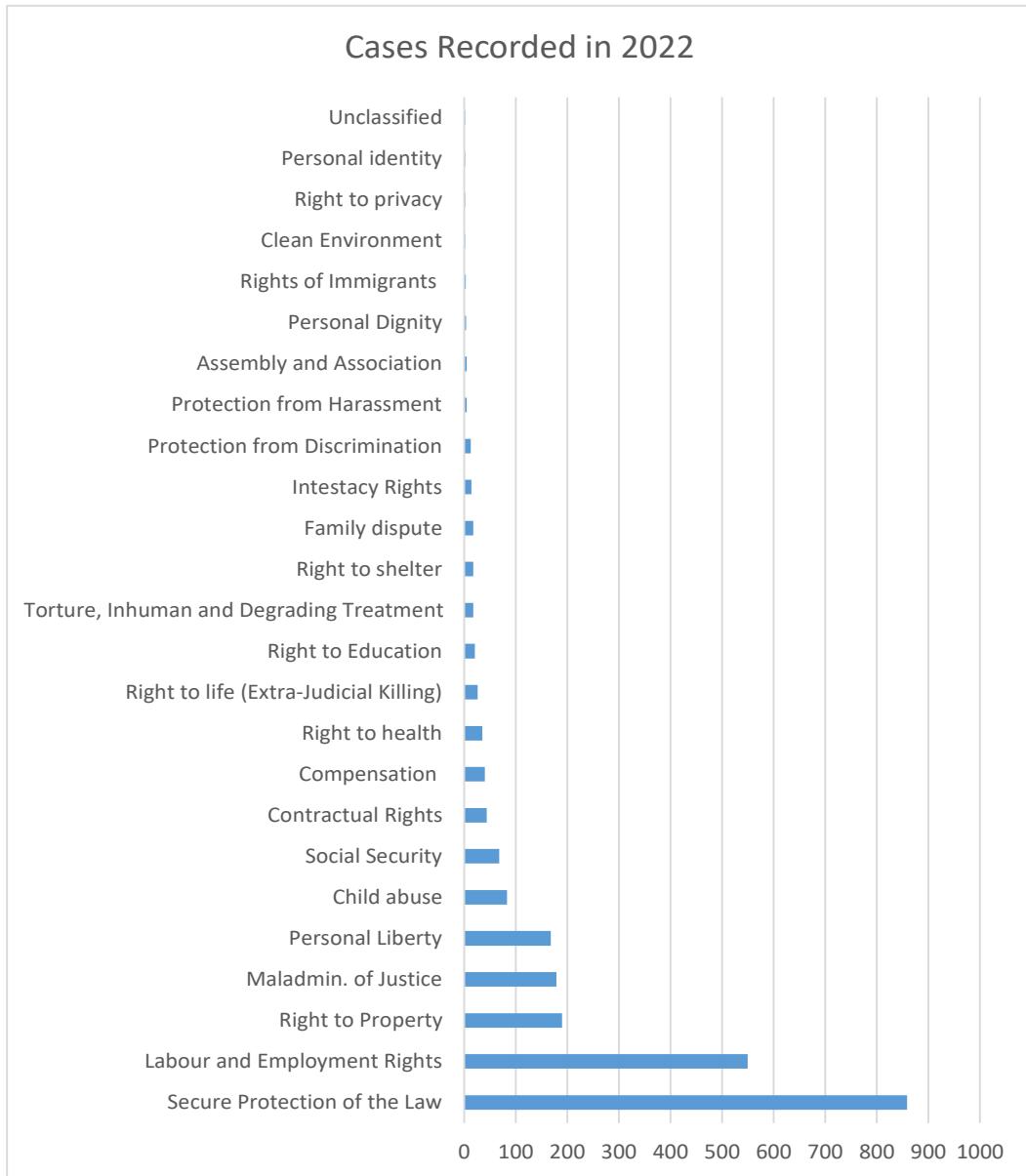
Figure 4: Classification of Complaints Recorded in 2021

Figure 5 Classification of Complaints Recorded in 2022

An analysis of cases handled suggests that a significant majority were related to secure protection of the law, followed by those relating to labour and employment rights in both 2021 and 2022. However, in 2021 there were many cases received relating to violation of right to freedom of assembly. This could be attributed to the fact that this was election year and the contestation to reach out to as many voters is usually at its peak. In more than 90% of the cases recorded the main respondent was the State through its agencies especially against law enforcement officers, for failing to respect the rights of suspects as provided in the Constitution and other laws. In cases relating to secure protection of the law, victims were subjected to arbitrary detention and arrests, delayed disposal of cases, lack of legal representation, torture, inhuman and ill-treatment or degrading punishment, violation of the presumption of innocence, etc.

4.2 CIVIL AND POLITICAL RIGHTS

4.2.1 The Right to Life

The right to life is guaranteed under Article 12 of the Constitution of Zambia, however, this right is not absolute, therefore deprivation of life can be a lawful and legitimate State action. The right to life is also guaranteed by various international and regional human rights instruments to which Zambia is a State Party. These include the Universal Declaration of Human Rights (UDHR) adopted by the United Nations (UN) General Assembly in 1948, the International Covenant on Civil and Political Rights (ICCPR), which was adopted by the United Nations General Assembly in 1966 and the African Charter on Human and Peoples' Rights (ACHPR) adopted by the Organisation of African Union [African Union] in 1981.

The ICCPR under Article 6 provides as follows:

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

(6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

The ACHPR protects the right to life under Article 4 and provides as follows:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Further, the Constitution of Zambia under Article 12 provides that:

No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

Although the right to life is protected by the Constitution, the law provides clauses that render the right to life in Zambia not absolute. It could be deprived of either through the execution of a death sentence or arbitrarily through extra-judicial killings.

In the period 2021-2022, a good number of people were deprived of their right to life in various circumstances.

In 2021, the Zambia Police Service recorded eight hundred and forty-seven (847)⁶ murder cases signifying that the right to life was deprived in an unlawful manner. In the same period, there were also cases where law enforcing agencies committed extra judicial killings in which life for the victims was deprived with impunity. Also, of high concern was the continued derogation in the Constitution provision on the right to life, legitimising deprivation of life in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which one could have been convicted.

In the same period, the Commission recorded thirty-five (35) cases of Extra judicial killing in which law enforcing agencies committed such vices with impunity. Nine (9) of these cases happened in 2021, and twenty-six (26) were committed in 2022. This indicates

⁶Zambia Police Service, 2021 Annual Report.

that cases of extra judicial killing were on the increase. Further, there were also other reports of extra judicial killing that the Commission monitored through the media in which suspected criminals were reported killed by law enforcing agencies. Therefore, cases received and investigated by the Commission could not have been representative of the actual cases of extra-judicial killings that were committed in the period under review, but could have been higher than those captured by the Commission. In all cases investigated, there was no evidence of the suspects that lost lives at the hands of the police being armed. It was attributed to police brutality. Some of the cases include, but not limited to the following:

1. *In December, 2021, News Diggers wrote that the Zambia Police through its Spokesperson Mr. Rae Hamoonga indicated that the police had shot dead three (3) suspected criminal in Chunga Township in Lusaka⁷*
2. *On 4th June 2022, the Police shot dead Mr. Noble Mulenga, 35 years old, a worker at Kateshi Coffee Plantation in Kasama, Northern Province. He was with other workers who were demanding for improved conditions of service.*
3. *On 30th November 2022, the Zambia Police reported that they had shot dead one suspect identified as Marlon Mutakasha commonly known as Fresher, aged 32. The police alleged that the suspect was behind a spate of Aggravated Robberies involving motor vehicles and attacks on Yango Taxi drivers. The suspect was shot dead in Chunga area, Lusaka Province, allegedly after a member of the public spotted him and alerted the police⁸*
4. *Furthermore, the Police confirmed shooting dead five (5) suspected criminals on the outskirts of Chililabombwe District on the Copperbelt Province, in November 2022⁹*
5. *On 4th November 2022, the police again shot dead six (6) alleged armed suspected criminals aged between 25 and 34 years in Kasupe Area of Lusaka West. The Police claimed that the armed "criminal suspects" were about to stage a robbery at Chinese owned company on Kasupe Road.*
6. *Zambia Police further confirmed shooting dead two suspected criminals in an exchange of fire in Lusaka's Makeni area who were allegedly about to ambush and rob a business man of Indian origin.*

"Police on 5th January 2022 received information that they were four suspected criminals driving a Nissan Tiida registration number AIC 6983 silver in colour. Police patrol vehicles in the field were alerted and rushed to the scene. Upon realizing the presence of the police, the suspects took off prompting the officers to give a chase. When the suspects noticed that they were being trailed, they immediately sped off with the view to escape.

They later on abandoned the vehicle and started running away. It was at this point that the officers fired warning shots and in the process two were maimed and the other two manage to escape. However, the two who were shot at were rushed to the hospital and upon arrival they were pronounced dead", read the Police Press Statement.

⁷ Police kill 3 criminals in Chunga shoot-out - Zambia: News Diggers! <https://diggers.news/local/2021/12/02/police-kill-3-criminals-in-chunga-shoot-out/>

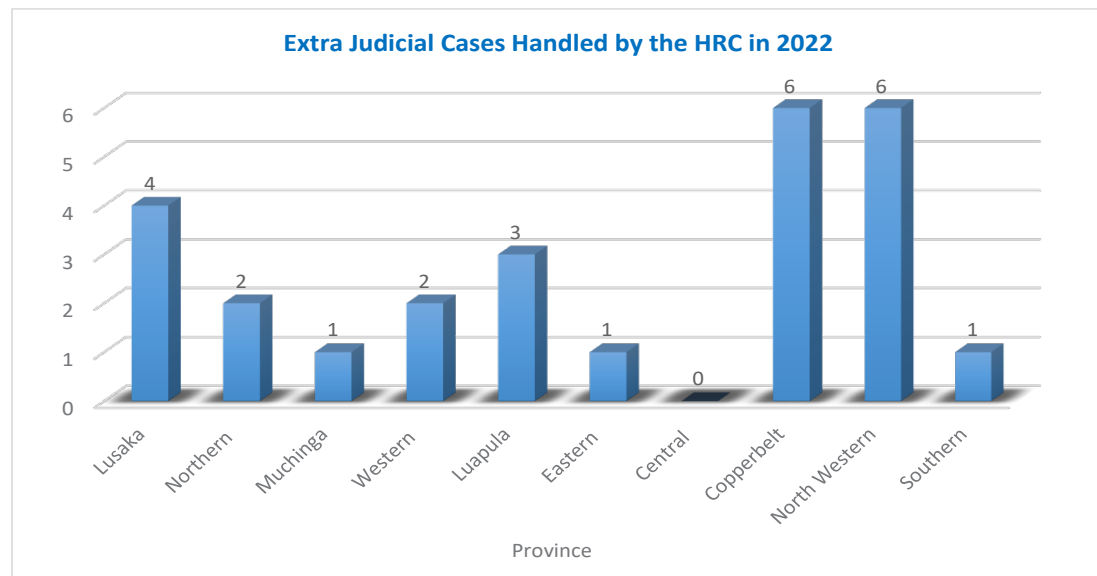
⁸<https://www.mwebantu.com/suspect-behind-a-spate-of-aggravated-robberies-and-attacks-on-yango-drivers-shot-dead-police-say/>

⁹<https://diggers.news/local/2022/11/23/chililabombwe-police-gun-down-5-criminals/>

From the above cases, it was clear that cases of extra-judicial killings, relating to police shooting dead suspected criminal especially aggravated robbery related cases, were rampant, thereby violating the right to life.

The figure below shows numbers of complaints of extra judicial killings that were reported to the Commission in the year 2022.

Figure 6: Cases of Extrajudicial Killings



4.2.1.1 The Death Penalty

Although Zambia had not carried out any executions since 1997, the law in Zambia continued to provide Death Penalty for individuals convicted of committing capital offences of treason, murder and aggravated robbery where a firearm was used. This was in line with the Penal Code, Chapter 87 of the Laws of Zambia and the Criminal Procedure Code, Chapter 88 of the Laws of Zambia. As a result of this, the courts continued to sentence individuals to death. During the period under review [2021-2022], there were on average 380 inmates on the death row at Mukobeko Maximum Security Prison. All the inmates were held in a section whose capacity is for just 48 inmates.

In the post-independence period, Zambia has executed at least 70 people. Statistics indicate that since 1997, Zambian presidents have refused to sign execution orders, choosing instead to commute sentences to life imprisonment. With Zambia, having not carried any execution for more than 10 years, it was classified as a defacto moratorium on death penalty, and to legalise the decision of moratorium on death penalty, on 23rd December 2022, President Hakainde Hichilema assented to the Criminal Procedure Code (Amendment) Act No. 24 and the Penal Code (Amendment) Act No. 25 of 2022 which abolished the death penalty. The removal of capital punishment from the Penal Code Act, Chapter 87 of the Laws of Zambia, is a positive stride towards effective protection of the right to life and a measure to eradicate the use of cruel, inhuman and degrading method of punishment. However, the Defence Act Chapter 106 of the Laws of Zambia, still prescribes for the death sentence as a form of punishment.

Recommendations

- *There is need for the State to amend all laws in the country that provide or justify use of death penalty as a form of punishment. This includes holding a National Referendum to remove the derogation to the right to life under the Constitution, and also amending the Defence Act which provide death penalty.*
- *Zambia should also ratify or accedee to the 2nd Optional Protocol to the ICCPR that abolishes the death penalty.*

4.2.2 Extra-Judicial Killings

Extra judicial killing or summary or arbitrary execution refers to deliberate killing of a person by someone in an official position without the lawful authority granted by a judicial proceeding. It is causing death by State agents such as Law Enforcement Officers without sanction of any judicial proceeding or legal process. It is actually a grave violation of the right to life.

As stated earlier, the right to life is protected under various international and regional human rights instruments, including the UDHR and the ICCPR. The ICCPR does not provide for derogations to the right to life based on arbitrary deprivation of the right to life or circumstances that are stipulated under Article 12 of the Constitution of Zambia. However, Article 12 (3) of the Constitution of Zambia provides wide derogations to the right to life which legitimize to some extent extra judicial killing.

These derogations have been abused by some sections of the law enforcement agencies to commit extra-judicial killings with impunity.

Article 12 (3) of the Constitution of Zambia

Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases; as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case:

(a) for the defence of any person from violence or for the defence of property;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war;

(d) in order to prevent the commission by that person of a criminal offence



A victim of extra judicial killing

4.2.3 Freedom from Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment

Freedom from torture other cruel, inhuman or degrading treatment or punishment is enshrined as an absolute right under international and regional human rights instruments as well as under the Constitution of Zambia. Therefore, no person under whatsoever circumstances should be subjected to torture, whether physical or mental for the purpose of obtaining information or a confession, or being treated in a cruel and degrading manner for an act committed or suspected to have been committed. Its definition is fully provided by Article 1 of the UNCAT ¹⁰.

The Constitution of Zambia prohibits torture in absolute terms. Under Article 15 it provides that:

A person shall not be subjected to torture, or to inhuman or degrading punishment or other like treatment.

Despite Zambia having ratified the Convention against Torture (CAT) and domesticating it in the Constitution, no law has been enacted to define torture, provide for criminal offences and penalties relating to acts of torture. As a result, people arrested for acts of torture, are charged and prosecuted for lesser offences, for example, offences like Assault Occasioning Actual Bodily Harm (OABH).

¹⁰Extract from the definition of torture provide under Article 1 of the UNCAT.

During the period under review, the Commission recorded a number of incidents relating to torture perpetrated by law enforcing agencies. In 2021, the Commission recorded thirty-nine (39) complaints of torture while in 2022, a total of seventy-six (76) complaints were received. The victims suffered different types and levels of torture ranging from minor ill-treatments to severe torture, in some cases resulting in fatalities. Despite recording one hundred and fifteen (115) complaints in the period under review, there could have been other cases that were not brought to the attention of the Commission at the time of their occurrence especially individuals in custody could only disclose upon being interviewed during the survey. Other cases were only monitored through in the media, for example, the case involving juveniles who were illtreated for allegedly defaming the president.

Figure 7: Cases of Torture Recorded by HRC in 2021 & 2022.

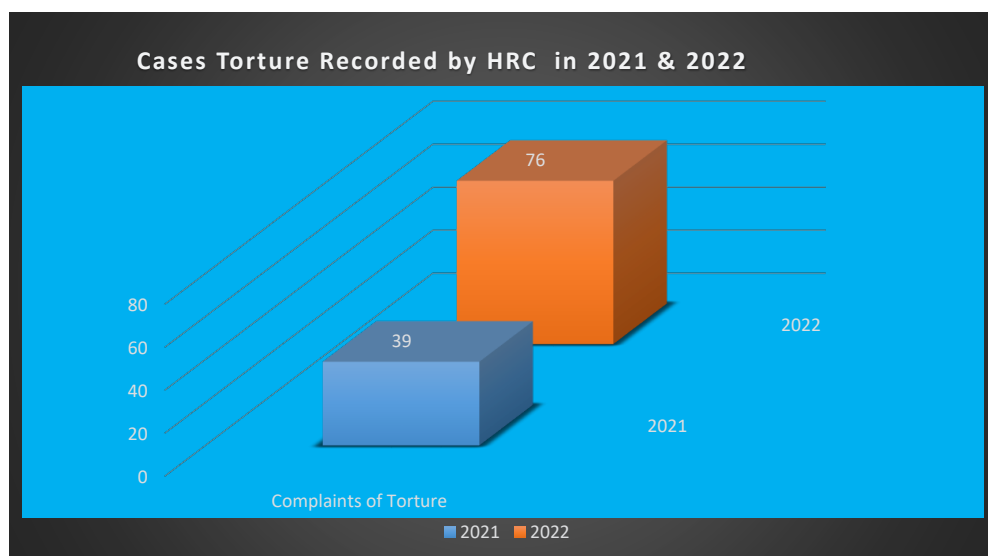
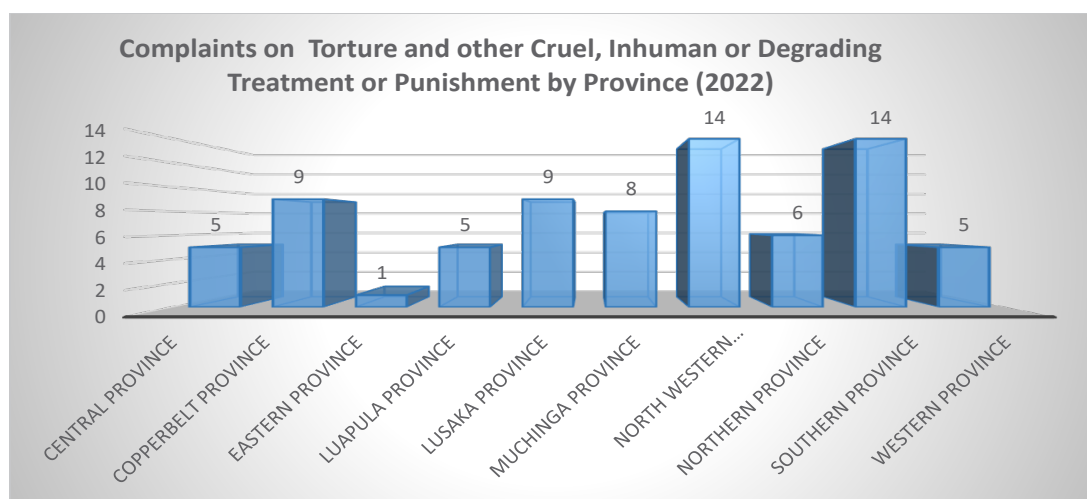


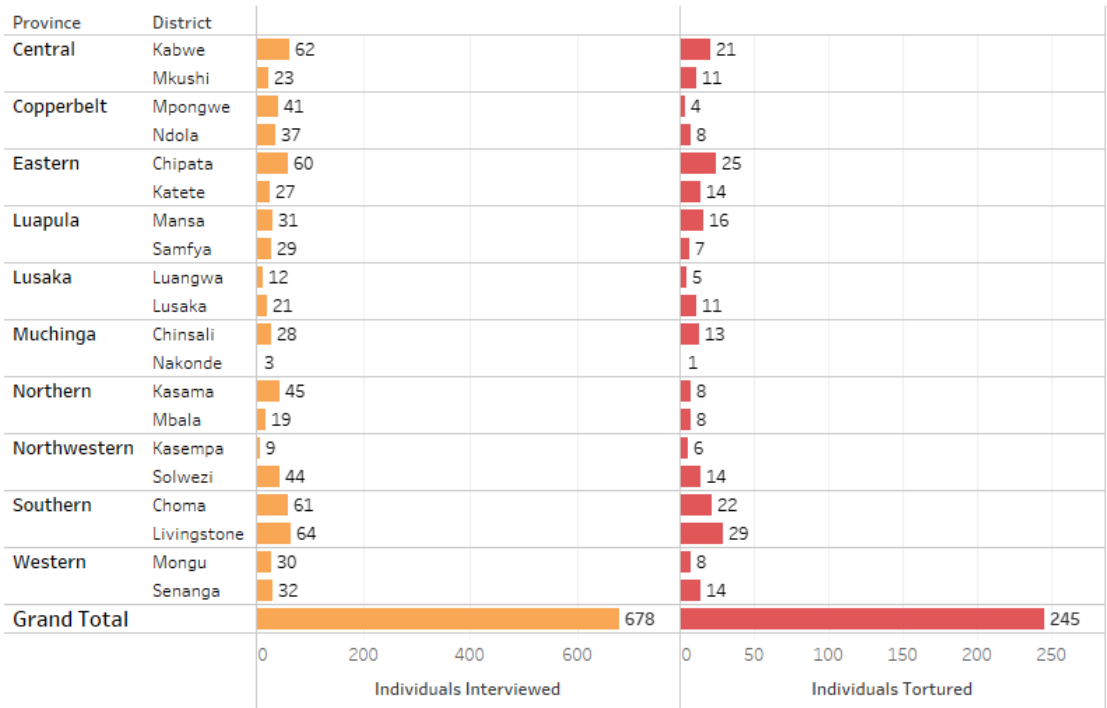
Figure 8: Complaints on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by Province (2022)



From interviews held with individuals in some detention facilities, it was found that during the period under review, 36.1% of individuals held in custody had been subjected to acts of torture and other cruel, inhuman degrading treatment or punishment during arrest and interrogation by law enforcement officers. On average, this was a 13.9% decline from the 50% recorded in 2018. In some districts, however, the prevalence rate of torture was as high as 50%. More than 60 % of those who allegedly were subjected to torture or ill-treatment, claimed to have been subjected to severe beating so that they could confess having committed the alleged crimes.

Figure 9 Inmate Showing Scars from Injuries Sustained from Severe beating



Figure 10: Analysis of Torture for Individuals in Custody

4.2.3.1. Recommendations

- There is need for the enactment of law criminalising Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to give effect provisions under Article 15 of the Constitution of Zambia including making evidence extracted through torture inadmissible in court.
- There is need to enhance capacity of Law Enforcing Agencies that include modern investigations techniques and forensic analysis to prevent them from relying on confessions obtained through torture or ill-treatment.
- There is need for inmates to have appropriate space to share information with their lawyers or relatives to increase on the chance of suspects disclosing to their relatives on the conditions they are held under and the treatment therein.
- Zambia should ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), to benefit from available international best practices including learning and information sharing for LEA.

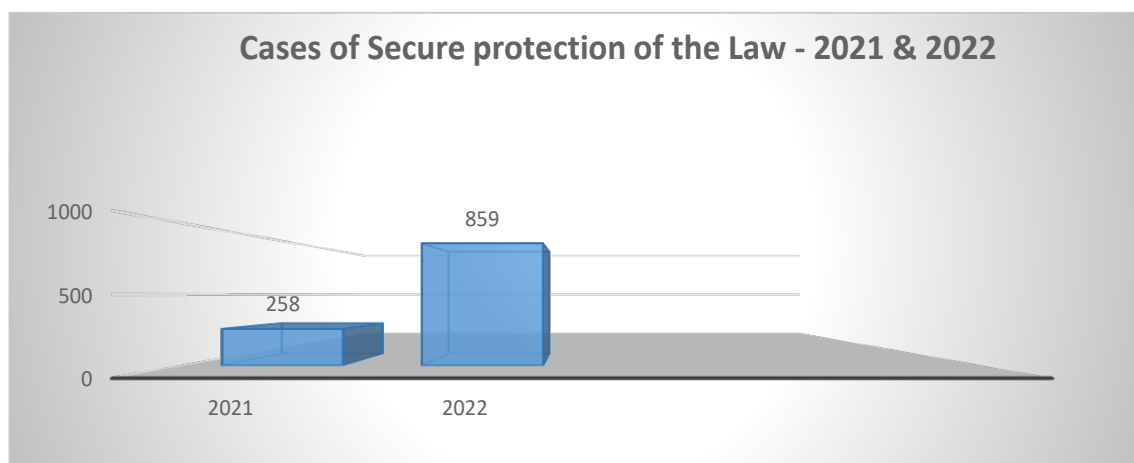
4.2.4. Secure Protection of the Law

The right to secure protection of the law has for a long time been a problem in Zambia¹¹. Secure protection of the law implies that when someone is charged with a criminal offence, they have the right to a fair hearing, which must take place within a reasonable time. The Court that hears the case must be independent and unbiased, and the trial should take place in public. Everyone has the right to be presumed innocent until they are found guilty, and to be informed of why they are being charged. Everyone has the right to an attorney or a legal representative, and if they cannot afford one, the State must pay for them to have one. In Zambia, this right is protected under Article 18 of the Constitution and it's aligned to Article 26 of the ICCPR. Article 18 in summary gives everyone the right to protection of the law, including:

- (i) the right to a fair hearing by an impartial Court
- (ii) the right to be presumed innocent
- (iii) the right to be told about the offence that they are being charged with
- (iv) the right to have a lawyer if they are charged with an offence, or to defend themselves
- (v) the right to examine witnesses
- (vi) the right to have their trial take place in a language they understand, or to have an interpreter provided.

In the period under review, the Commission recorded more complaints relating to secure protection of the law in 2022 compared to 2021. This may be attributed to COVID-19 restrictions, which could have prevented complainants lodging complaints to the Commission through their outreach programmes (in person), especially for those incarcerated in detention facilities.

Figure 11: Cases of Secure Protection of the Law - 2021 & 2022



¹¹Among the complaints received by the Human Rights Commission for the past 10 years, this category of complaints has ranked number one.

4.2.4.1. Right to be Informed of Reasons for Detention

Persons who have been detained by Law Enforcement Agency (LEA) have rights to be informed of the reasons for detention. This is part of the right to fair trial and equal protection of the law as envisaged under Article 26 of the International Covenant on Civil and Political Rights and Article 3 of the African Charter on Human and Peoples' Rights. Article 31 of the General Comment No. 32 of Article 14 of ICCPR elaborates that:

*the right to be informed of the charge "promptly" requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law, or the individual is publicly named as such. The specific requirements of subparagraph 3 (a) may be met by stating the charge either orally - if later confirmed in writing - or in writing, provided that the information indicates both the law and the alleged general facts on which the charge is based*¹².

The Constitution of Zambia under Article 18 (2) (b) states that:

*Every person who is charged with a criminal offence "shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged"*¹³.

Despite these guarantees under international and regional human rights law and the Constitution, the study found that 91.3% of inmates interviewed indicated that they were not informed of the reason for detention during the time of their arrest. No reason was given to them on being apprehended.

4.2.4.2. Time Spent in Custody Before being Charged

As part of the right to fair trial, international human rights law particularly as elaborated under General Comment No. 32 on Article 14 of ICCPR, guides that:

The right of the accused to be tried without undue delay, provided for by Article 14 (of ICCPR), paragraph 3 (c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice. What is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities. In cases where the accused are denied bail by the Court, they must be tried as expeditiously as possible. This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal. All stages, whether in first instance or on appeal must take place "without undue delay."¹⁴

¹²General Comment No. 32 on Article 14 of ICCPR, 2007.

¹³General Comment No. 32 on Article 14 of ICCPR, 2007

¹⁴ibid

Zambia, in line with international human rights law, has put in place laws requiring for arrested persons to be charged, taken to Court and their cases to be heard without undue delays. However, this is not strictly adhered to or complied with as majority suspects were being held in custody without being charged of the offence committed within reasonable time¹⁵. This could be as a result of a range of reasons, from practicalities surrounding the case to inadequate capacity issues with Law Enforcement Agency (LEA). In the majority of the cases, the Commission learnt that the delays were due to Police still conducting investigations on the matter. This is despite Court and State policy guidance that persons should only be arrested when sufficient evidence has been gathered and warrants arrest of suspect in a matter.

In the period under review, it was found that more than 50% of suspects spent on average seven (7) days or more before they were formally charged.

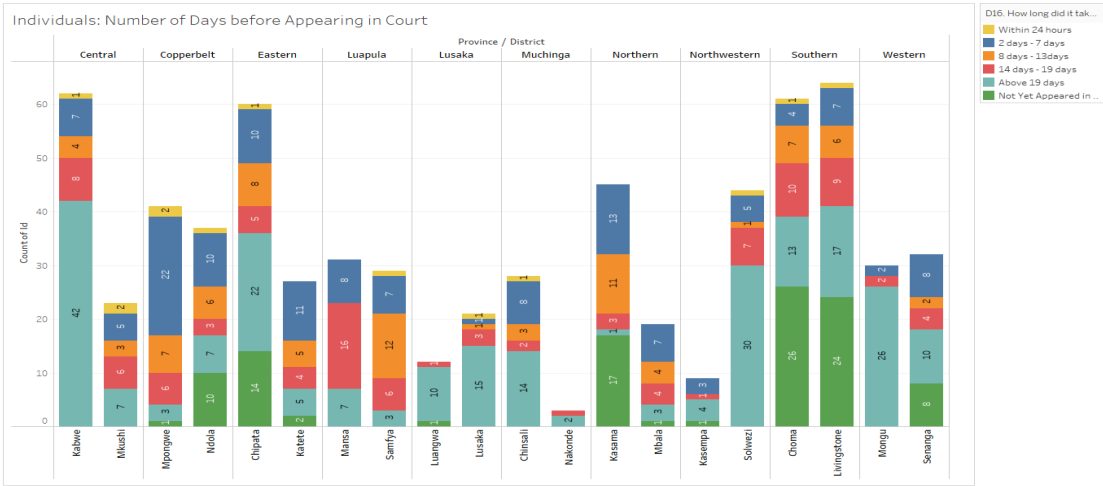
4.2.4.3. Time Spent Before Appearing in Court

Although the outbreak of Covid-19 had a negative effect on the efficiency operation of law enforcing agencies and courts, it was not justification for unwarranted delay for suspects to appear before Court. The study found that 98% of respondents indicated that they only appeared in court after more than the stipulated twenty-four (24) hours. Only 2% indicated they were taken to Court within 24 hrs, 20% spent between 2-7 days, 12% spent 8-13 days, 15% spent 14-19 days, 36% spent over 19 days and 15% had not appeared in Court at the time of the interview.

Table 3: Time Spent Before Appearing in Court

Responses		Frequency	Percent	Cumulative Percent
	Within 24 Hrs	13	2	2
Valid	2-7days	138	20	22
	8-13days	80	12	34
	14-19 days	101	15	49
	Above 19 days	241	36	85
	Not yet appeared in Court	105	15	100
Total		678	100	100

¹⁵<https://zambia.actionaid.org/publications/2021/statement-unlawful-detention-actionaid-zambia-board-chairperson-mr-partnerA> | ActionAid Zambia

Figure 12: Analysis on the Number of Days Suspects Spent before Appearing in Court**Table 4: Detailed Analysis on Time Spent in Custody before Court Per Province**

Individuals: Number of Days before Appearing in Court - Table

Province	District	D16. How long did it take before you were taken to appear before court?					Not Yet Appeared in Court
		Within 24 hours	2 days - 7 days	8 days - 13 days	14 days - 19 days	Above 19 days	
Central	Kabwe	1	7	4	8	42	
	Mkushi	2	5	3	6	7	
Copperbelt	Mpongwe	2	22	7	6	3	1
	Ndola	1	10	6	3	7	10
Eastern	Chipata	1	10	8	5	22	14
	Katete		11	5	4	5	2
Luapula	Mansa		8		16	7	
	Samfya	1	7	12	6	3	
Lusaka	Luangwa				1	10	1
	Lusaka	1	1	1	3	15	
Muchinga	Chinsali	1	8	3	2	14	
	Nakonde				1	2	
Northern	Kasama		13	11	3	1	17
	Mbala		7	4	4	3	1
Northwestern	Kasempa		3		1	4	1
	Solwezi	1	5	1	7	30	
Southern	Choma	1	4	7	10	13	26
	Livingstone	1	7	6	9	17	24
Western	Mongu		2		2	26	
	Senanga		8	2	4	10	8
Grand Total		13	138	80	101	241	105

In some districts, the delay was attributed to unavailability of Courts especially the Subordinate Court. For example, Sinda District of Eastern Province had no Resident Magistrate, suspects who were charged with non bailable offences and those of no fixed abode were normally held in custody waiting for a circuit Court whose sitting was dependant on the availability of resources. Further, some suspects could not regularly be brought before Court as and when the matter was to be heard due to lack of transport to move such accused persons from detention facilities to Court and back.

4.2.5. Deprivation of Right to Property

The right to property is protected in international and regional human rights law. The Constitution of Zambia, under Article 16, enshrines this protection and states that:

Except as provided in this Article, no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.

In the period under review, the Commission received 261 complaints or allegations relating to deprivation of property, mostly relating to land dispossession. Thirteen (13) individuals lodged complaints alleging deprivation of the right to land by traditional leaders (Chief and or Headman). The Commission has noted with growing concern that most of the land being dispossessed from subjects by traditional rulers is being sold for huge amounts of money to investors. Subsequently, the permission is granted to these investors to obtain title thereby converting the tenure to statutory leasehold. This practice has tended to deprive many rural households of the means of production and livelihood. The Commission has further received complaints that subjects who have dared to complain have been subjected to ill-treatment, harassment including forced eviction by the same traditional rulers.

However, there were no allegations of arbitrary acquisition of Land by the government recorded in the same period.

4.2.5.1. Recommendation;

- (i) *There is need to amend the Lands Act including the Land policy to create an elaborate and transparent systems to remove arbitrary alienation and sale of traditional land to investors by traditional leaders, including enabling usefractory right holders to make informed and final decisions.*
- (ii) *There is need to also audit and determine remaining traditional land so as to enable the State rationalize conversion of ownership from traditional to statutory to prevent depletion of traditional land and halt reckless deprivation of many rural households the source of livelihoods.*

4.2.6. Right to Personal Liberty

The right to liberty is one of the fundamental rights protected both in international and regional human rights law as well as in the Constitution of Zambia. However, this right is not absolute and can be limited or derogated in certain circumstances.

Article 13 of the Constitution provides for the protection of personal liberty and provides that:

No person shall be deprived of his personal liberty except as may be authorized by law in any of the following cases:

- (a) *in execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence or which he has been convicted;*
- (b) *in execution of an order of a court of record punishing him for contempt of that court or of a court inferior to it;*

- (c) in execution of an order of a court made to secure the fulfilment of any obligation imposed on him by law;*
- (d) for the purpose of bringing him before a court in execution of an order of a court;*
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;*
- (f) under an order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;*
- (g) for the purpose of preventing the spread of an infectious or contagious disease;*
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of this care or treatment or the protection of the community; (i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or*
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful.*

In the period under review, the Commission received and resolved 81 (2021) and 168 (2022) cases relating to deprivation of personal liberty. The cases bordered on a number arbitrary and unlawful arrests by the Police and other Law enforcement bodies. The suspects were in some instances not informed of the reasons for their arrests, were not charged as soon as it was reasonably practicable, were detained for purposes of conducting investigations and denied police bond and were subjected to *lengthy periods* of detention before being brought before a Court of competent jurisdiction. Further, there were cases of unlawful deprivation of liberty for persons detained on allegations of being prohibited immigrants.

4.2.7. Conditions of Detention Facilities

The conditions in most detention facilities across the country remained below the minimum required standards prescribed in the Standard Minimum Rule[s] for the Treatment of Prisoners (SMRTP) or the Mandela Rules. During the period under review, the Human Rights Commission visited a number of correctional facilities as provided for under the Act. The following were some of the findings;

4.2.7.1. Overcrowding

It was observed during the inspections that most facilities remained overcrowded despite State efforts to rehabilitate old and build new facilities. As at 27th December, 2022, the combined facilities holding capacity stood at 10, 650 against the daily average

unlock of 24, 000, representing 130% overcrowding. Of that daily average unlock, pre-trial detainees represented almost 25%.

The overcrowding in places of detention has recently been compounded by the increasing number of immigrants. The overcrowding has had negative consequences on the sanitation conditions in these facilities, which has continued to be a huge challenge.

4.2.7.2. Separation of Categories

There still remains a challenge in effecting separation of categories in most correctional facilities as some juveniles are still mixed with adult remandees and convicts. The only certain kind of separation strictly enforced is between male and female cells. In some facilities children were mixing with adults and persons detained under the President's pleasure. During the period under review, the problem became compounded by the outbreak of Covid-19 as correctional facilities had to create separate isolation quotas for inmates who required isolation due to infection.

4.2.7.3. Food

Most of the facilities monitored provided inmates with breakfast, lunch and supper, however, the quality of the food and nutritional balance remained of great concern. Most of the food was not stored in hygienic environments. The meals mostly consisted of samp, beans and Nshima and occasionally with some vegetables. Meals were usually prepared using firewood as most facilities had no electric pots. Although it was indicated that inmates were served three meals per day, the reality was that lunch was considered as double portion as inmates were advised to keep a portion for their dinner.

4.2.7.4. Sanitation Conditions

Most Correctional Facilities visited during the period provided running water and other water points outside the dormitories. However, most dormitories only had one toilet available for use against a huge number of inmates, especially the male inmates, which in turn put pressure on the sewer system leading to blockages and outbreak of water borne diseases such as dysentery and typhoid.

4.2.7.5. Health Care

A number of Correctional Facilities inspected across the country conducted some screening of all inmates before they entered the facility. This screening was particularly heightened at the peak of the COVID-19 pandemic that hit Zambia in early 2020 and most of 2021. This was later adopted as a norm and was strictly adhered to by officers and inmates. These Correctional Facilities currently have health care points and staff within the facilities and only serious cases are referred to higher level public health facilities in the district.

4.2.7.6. Education and Recreation

During the period under review, there were some improvements with regards to education and recreation in the correctional facilities. For example, at Mukobeko Maximum Correctional Facility, all of the courses being undertaken by the inmates in the facility were TEVETA approved. The challenge, however, was that, once inmates were released from facilities back into mainstream society, they were not given start-up capital or equipment to help them make use of the skills acquired whilst in the facility, to help them earn a living.

4.2.7.7. Contact with the Outside World

The Offender Management Unit under the Zambia Correctional Service is the Unit responsible for informing family members or legal guardians that a member of their family had been brought into the facility. This also applies to foreign nationals received for detention in facilities.

During inspection of facilities, it was observed that most inmates were granted permission to communicate or consult with their lawyers, legal guardian and/or family members. However, convicts continued to face challenges regarding regulated visits by family members for a number of reasons.

Even though Zambian inmates had no serious challenges communicating with the outside world, non-Zambians especially immigrants faced challenges communicating with their families or friends back in their countries. This was mainly due to the cost involved and as well as language barriers.

In terms of visitation by other legal representatives or family members, it was observed that most facilities did not have visitor's rooms. Visits by legal representatives took place within sight of officers but not within hearing distance.

4.2.7.8. Recommendations

- (i) *There is need to expedite legal reforms to provide for non-custodial sentencing for minor offences including standardisation of bond and bail, to remove discretionary powers and make it more predictable.*
- (ii) *State should expedite implementation of the Children's Code Act in order to address problems faced by children in conflict with the law.*
- (iii) *State should going forward focus on rehabilitation and expansion of old Correctional facilities to address over-crowding in facilities.*

4.2.8. Rights of the Child

Zambia is State party to the United Nations Convention on the Rights of the Child since 1991. At regional level, she is party to the African Charter on the Rights and Welfare of the Child ratified in 1992. She is however, yet to accede to the two optional protocols; (i) the Optional Protocol on the involvement of children in armed conflict and (ii) the second Optional Protocol on the sale of children, child prostitution and child pornography.

A number of domestic laws have also been enacted to domesticate the CRC at local level. However, despite those efforts, the country has continued experiencing violations on children's rights over the years. In the recent past, child marriages and teenage pregnancies were rife. According to the UNICEF 2021 Situation Analysis on the Status of Children, an estimated 29 per cent of women aged 20–24 years were married before the age of 18. Additionally, a number of children fail to go school for various reasons including long distances, poverty, unavailability of school places, food including scarcity of appropriate menstrual hygiene commodities.

In order to address some of the hurdles in enjoyment of children's rights, the State enacted the Children's Code Act in 2022. The Act brings together all children's rights protections provided in various pieces of legislation. It also enhances protection of rights

of children in conflict with the law. For example, due to difficulties Correctional Facilities experience in ensuring separation of children from adult inmates, it is now mandatory to grant children bond and bail, when charged with an offence. It is also mandatory for government and those providing parental responsibilities to ensure children go to school, access health services etc

The Children's Code Act also provides stiff penalties for anyone involved in child marriages (persons under 18) and practices that undermine a child's development. The Act further introduces child safeguarding procedures for all services and organizations working with children, among other many progressive provisions.

According to the UNICEF's 2021 Situation Analysis on the Status of Children, teenage pregnancies remain high in Zambia at 29 per cent and has not changed since the previous Demographic and Health Survey (DHS) of 2013–2014. These young girls in rural areas are twice as likely to get pregnant than girls in urban areas (37 per cent versus 19 per cent) and with geographical variations of 43 per cent in Southern province to 15 per cent in Lusaka, highlighting equity related barriers that need to be addressed. Regardless of the enactment of the law, there was still lack of knowledge or information of the rights of children and the need to apply the best interest of the child in making decisions affecting children.

The Table below shows the number of teenage pregnancies that were recorded in the sampled districts during the period under review. It was observed that cases of teenage pregnancies were increasing, recording 353 cases in 2021 and 1336 cases in 2022.

Table 5: Number of Girls who Fell Pregnant in 2021 & 2022

Child Marriage: Number of Girls Who Fell Pregnant		Number of girls that fell pregnant in 2021	Number of girls that fell pregnant in 2022
Central	Kabwe		
	Mkushi	5	7
Copperbelt	Mpongwe		
	Ndola	5	4
Eastern	Chipata	15	17
	Katete	40	33
Luapula	Mansa	24	31
	Samfya	0	0
Lusaka	Luangwa	2	8
	Lusaka	45	34
Muchinga	Chinsali	9	9
	Nakonde	21	905
Northern	Mbala	8	20
Northwestern	Kasempa	16	9
	Solwezi	37	42
Southern	Choma	17	23
	Livingstone	108	102
Western	Senanga	1	92
Grand Total		353	1,336

4.2.8. Media Freedoms

Freedom of expression is guaranteed under Article 20(1) of the Constitution. In line with the International Covenant on Civil and Political Rights, the Constitution under the Article 20 (1) provides that:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence ¹⁶.

As with many other rights, this freedom is not absolute. Under Article 20(3), a number of limitations are provided for including Article 20 (3) (a) which provides that:

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ¹⁷.

Article 50 of the Constitution also mandates the media to provide coverage to political parties and candidates contesting during elections without restriction. The Electoral Process Act of 2016 (7- 9) requires the media to cover elections fairly. The Public Interest Disclosure (Protection of Whistleblowers) Act (2010) also protects media institutions and personnel as whistleblowers.

Since the change of government in 2021, the media has enjoyed unprecedented freedom to write and broadcast their stories. The amendment of Section 69 of the Penal Code relating to criminal defamation of the President, removed fear of arrest and prosecution for publishing or broadcasting stories which were heavily critical of the President.

The Cyber Security and Cyber Crimes Act of 2021 remains one of the most problematic pieces of legislation. The intention of the law was to promote and protect rights of people in the cyber space or ‘responsible use of social media platforms’ including creating offences and penalties. However, “many provisions in the law are ‘largely’ vague and overly broad and extend the powers of state authorities to restrict and punish online expression”¹⁸.

A 2022 assessment of enjoyment of press freedom by Reporters Without Borders Press Freedom Index 2021 and 2022 indicates that Zambia has slightly improved its ranking from 115 to 109 globally and remains 11th under SADC ¹⁹.

¹⁶ The Constitution of Zambia

¹⁷ Ibid

¹⁸ See page 62 of State of Press freedom in Southern Africa, 2022

¹⁹ MISA State of Press Freedom in Southern Africa, 2023.

Table 6 : Press Freedom Index 2021 and 2022

2021		2022		Trajectory	SADC Ranking
Angola	103	Angola	99	↑	10
Botswana	38	Botswana	95	↓	8
Comoros	84	Comoros	83	↑	6
Democratic Republic of Congo	149	Democratic Republic of Congo	125	↑	14
Eswatini	141	Eswatini	131	↑	15
Lesotho	88	Lesotho	88	-	7
Madagascar	57	Madagascar	98	↓	9
Malawi	62	Malawi	80	↓	5
Mauritius	61	Mauritius	64	↓	4
Mozambique	108	Mozambique	116	↓	12
Namibia	24	Namibia	18	↑	2
Seychelles	52	Seychelles	13	↑	1
South Africa	32	South Africa	35	↓	3
United Republic Tanzania	124	United Republic Tanzania	123	↑	13
Zambia	115	Zambia	109	↑	11
Zimbabwe	130	Zimbabwe	137	↓	16

Source: MISA State of Press Freedom in Southern Africa, 2022

5.0. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

5.1. Right to Health

Health is a fundamental human right indispensable for the enjoyment of other human rights, and every person has the right to the highest attainable standard of physical and mental health. It is legally protected under the ICESCR and complemented by other legal standards that include the CRPD, CEDAW, CRC, and other regional standards such as ACHPR, Maputo protocol. Article 12 (1) of the ICESCR states that;

State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health ²⁰.

In addition, Article 25 of the UDHR (1) provides that;

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control ²¹.

Further, Article 16 of the ACHPR provides that;

Every individual shall have the right to the best attainable state of physical and mental health ²².

As part of implementing the Health Financing Strategy 2017 – 27, the Government increased funding to the health sector in 2022 by allocating K13.9 billion from K9.7 billion in 2021, a nominal increase of 44.1 percent. As a percentage of GDP, this increase translates to 3.0 percent of GDP in 2022 from 2.6 percent of GDP in 2021. The share of the budgetary allocation to primary health services has increased from 32.7 percent in 2021 to 34.3 percent in 2022, demonstrating commitment to universal primary health care and bringing health care as close as possible to ordinary people especially in rural and peri-urban areas ²³.

The recruitment and deployment of 11,200 health personnel with a view to reduce patient to health personnel ratio, also worked to address the huge backlog of unemployed health personnel. At the same time, the use of Constituency Development Fund (CDF) towards improving health infrastructure will go a long way in addressing stagnating construction of health infrastructure including maternity wards and personnel accommodation to improve the level of care for women during pregnancy and childbirth and for the newborn babies and infants ²⁴.

Despite these strides, some bottlenecks remained especially around protracted systemic problems in procurement and distribution of essential drugs including the fact that the majority of the health personnel were concentrated around Lusaka and the Copperbelt.

²⁰International Covenant on Economic and Social Cultural Rights

²¹Universal Declaration of Human Rights, 1948

²²African Charter on Human and people's rights

²³www.unicef.org/esa/media/11336/file/UNICEF-Zambia-Health-Budget-Brief-2022.pdf

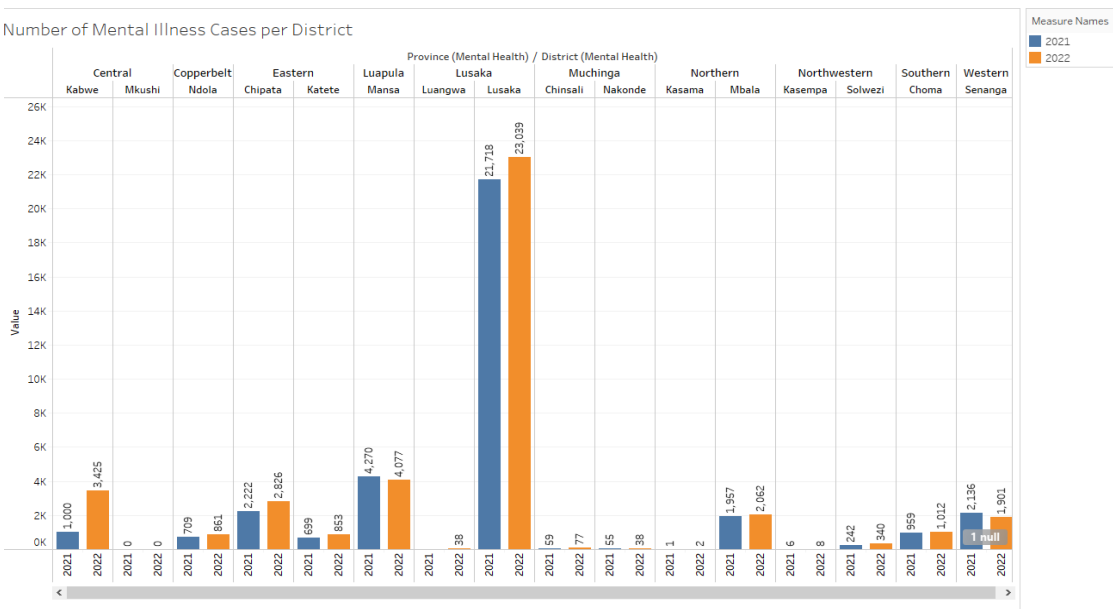
²⁴ibid

In 2017, for example, about 90 percent of the trained health workers were located in urban areas, while more than half of the population lives in rural areas ²⁵.

In Zambia, there is an emerging mental health problem which if not quickly addressed, will become endemic. According to a 2020 study on Strengthening mental health systems in Zambia, the prevalence of mental disorders was approximately 20 percent, with common mental disorders including acute psychotic episodes, schizophrenia, affective disorders, alcoholic related problems and organic brain syndromes ²⁶.

Data collected from fifteen (15) health care facilities in the period 2021 and 2022, showed that a total seventy-six thousand, one hundred and Forty-eight (76,148) person were screened and received psychiatry attention. However, this number could have been higher than what was provided as other facilities could not provide statistics for the fourth quarter of 2022.

Figure 13: Number of Mental Illness Cases per District



²⁵ www.solidarmed.ch/en/news/shortage-skilled-workers-health-system-zambia

²⁶ <https://ijmhs.biomedcentral.com/articles/10.1186/s13033-020-00360-z> (Strengthening mental health systems in Zambia | International Journal of Mental Health Systems | Full Text (biomedcentral.com))

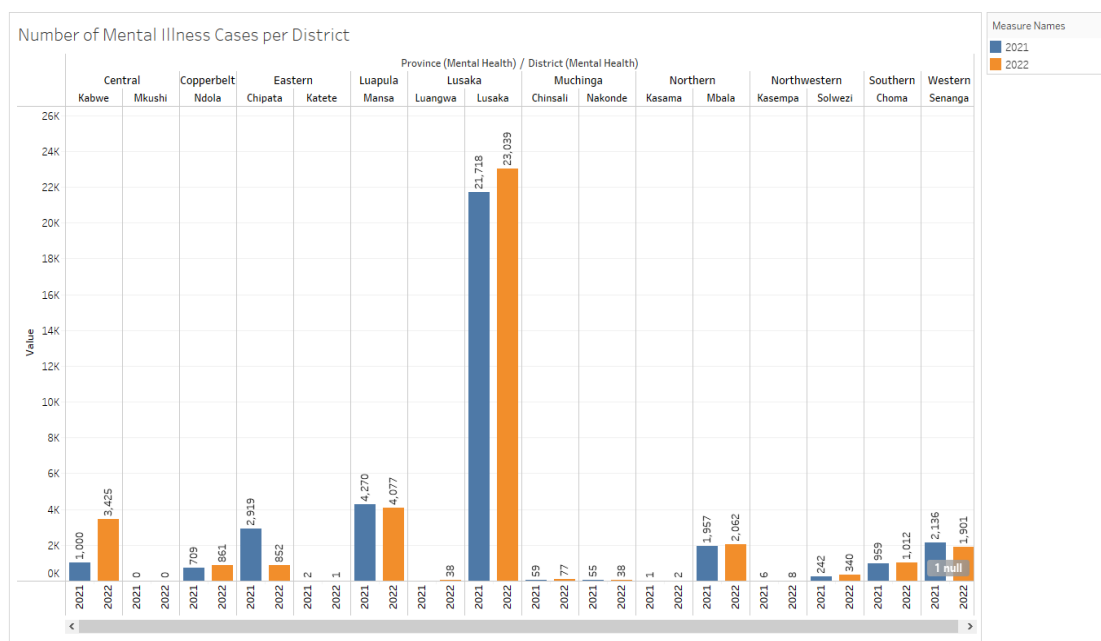
Table 7: Number of Mental Illness Cases per District

Number of Mental Illness Cases per District - Table

		2021	2022	Total Mental Health Cases 2021 and 2022
Central	Kabwe	1,000	3,425	4,425
	Mkushi	0	0	0
Copperbelt	Ndola	709	861	1,570
Eastern	Chipata	2,222	2,826	5,048
	Katete	699	853	1,552
Luapula	Mansa	4,270	4,077	8,347
Lusaka	Luangwa		38	
	Lusaka	21,718	23,039	44,354
Muchinga	Chinsali	59	77	136
	Nakonde	55	38	93
Northern	Mbala	1,957	2,062	4,019
Northwestern	Kasempa	6	8	14
	Solwezi	242	340	582
Southern	Choma	959	1,012	1,971
Western	Senanga	2,136	1,901	4,037
Grand Total		36,032	40,557	76,148

In the same vein, accessibility was a challenge for many people in most communities, as management of mental illness was only being provided at secondary and tertiary levels with negligible or no intervention at primary health care level. In some facilities, the challenge of accessibility, availability and quality was exacerbated by the outbreak of the Covid-19 pandemic as health facilities realigned both its financial and human resources towards the fight against Covid-19. Non-communicable diseases such as mental illness was relegated to exclusive out-patient attention unless in exceptional circumstance where the mental situation could not easily be managed by the community or family care givers.

In all the 10 provinces, only a limited number of secondary or tertiary health care facilities were providing comprehensive promotional, preventive, curative and rehabilitative services. More than 90% of mental health care facilities were operating with inadequate specialized personnel to offer comprehensive mental health care. Even in facilities where both psychiatrists, psychologists, social workers were available, there was inadequate coordination to promote multi sectoral approach in prevention and control of mental health contributing substances such harmful use of alcohol and illicit drugs. Facilities were failing to achieve expected level of prevention, promotion, treatment and rehabilitation.

Figure 14: Number of Mental Illness Cases per District

According to the budget for the implementation of the National Health Strategic Plan 2022-2026, mental health care services allocation was only 0.1% of the 3.1% allocated for the fight against Non-Communicable diseases where mental health care service was embedded. Under the 3.1% allocated, cancer control was given 2.8% while Non-communicable diseases in general had 0.2%²⁷. Further, 90% of the facilities indicated that the section had experienced erratic supply of necessary commodities such as Anti-psychotic drugs in the first quarter of the year 2022. However, in the subsequent quarters of the year, there was improvement in the supply of commodities.

Other notable challenges included inadequate information to mitigate long held beliefs, myths and misconceptions which resulted into societal biases and discrimination towards persons living with mental disorders. This affected both care givers and patients in accessing public or community mental health services and support.

5.2. Labour and Employment Rights²⁸

Labour rights are extensively protected under international human rights law. The International Covenant on Economic, Social and Cultural Rights, for example, provides for protections particularly under Articles 6 (right to work), 7 (just and favourable conditions of work), 8 (trade union rights, including the right to strike) and 9 (right to social security, including social insurance), but also under Articles 10 (rights of the family), 11 (provision of an adequate standard of living), 12 (health) and 15 (culture).

²⁷Ministry of Health, National Health Strategic Plan 2022-2026, Zambia.

²⁸This thematic area of the report was extensively influenced and borrows from the ILO Decent Work Country Profile Report for Zambia, 2012. It however, also benefits from the Commission's extensive monitoring of places of work and engagements with stakeholders on the enjoyment of the right to work including the Policy Brief published in November, 2020 on the rights of workers in the context of COVID 19 in Zambia.

General Comment No. 18 on the right to work emphasizes that the Covenant deals more comprehensively with that right than any other international instrument. It stresses that that work specified under Article 6 of the Covenant must be decent work, and that Articles 6 to 8 are interdependent. As outlined in its General Comment No.3 (1990) of the CESCR stresses core obligations of Article 6, encompassing non-discrimination and equal protection of employment; access to employment, especially for marginalized and disadvantaged individuals and groups must be ensured, in order for them to live a life of dignity; and measures must be avoided that lead to discrimination and unequal treatment in the private and public sectors of such individuals and groups; and the State party further is required to adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers' and workers' organizations.

Zambia has also ratified 43 ILO Conventions, including the eight fundamental Conventions, and two of the four governance Conventions. Even though labour rights are not part of the Bill of Rights, Zambia has comprehensively domesticated international labour standards through the enactment of the Employment Code Act No. 3 of 2019 and the Industrial and Labour Relations Act, chapter 265 of the Laws of Zambia, among others.

Protection of the right to work, family and personal life - The Employment Act (EA), minimum wage legislation and various collective agreements provide for paid leave and benefits, maternity leave, as well as remuneration for women on maternity leave. However, the Employment Act only provides paid leave for women to attend to a sick child. This culturally shaped law requires review to allow both men and women to take responsibility of sick children or immediate family members as a way of not only addressing the inherent discrimination in law but to recognize the important role men play and incentivize family responsibility in society.

Labour practices that should be abolished - The State has enacted various laws and regulations to combat the worst forms of child labour and sets the minimum age for employment at 15. The Anti-Human Trafficking Act of 2008 prohibits forced labour and the trafficking of children, while slavery is prohibited under both the Constitution and the Penal Code which also prohibits the sexual harassment of a child, pornography and prostitution. A lot of awareness raising has been carried over the last few years and together stiffened laws, has contributed to reduced incidents of child labour. Despite the aforesaid, Zambia still has a long way to go to ensure that the majority of Zambians enjoy stable and secure employment because of a largely informal sector driven economy. Incidents of child labour, especially in rural, peri-urban, farms and artisanal and small-scale quarrying, remain hidden and problematic.

The right to equal opportunity and treatment in employment- The State has put into place various pieces of legislation and policies to reverse the marginalization of women as well as other marginalized groups in the labour market. The Employment Act prohibits dismissal based on pregnancy or maternity leave and the Industrial Labour Relations Act (ILRA) prohibits the termination of services of an employee on the grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or status

of the employee. The Persons with Disabilities Act of 1996 prohibits discrimination in employment based on disability. It's equally gratifying that most employers claim they do not discriminate based on disability or gender. However, employment in some sectors such as mining and construction sector remained male dominated. Disparities between male and females in numbers of employees in both public and private remained in favour of males. Employment of persons with disabilities across all sectors remained poor despite incentives put in law.

The right to stable and employment security – The Employment Act protects employees against unlawful termination of employment as well as unilateral changes to terms and conditions of employment. The Act covers the permanent and pensionable terms of contracts, fixed-term contracts, as well as those under collective agreements. It does not cover workers employed in the security sector of the public service, nor does it apply to casual or informal workers, or to persons employed under an apprenticeship contract. The Minimum Wages and Conditions of Employment Act sets the minimum wage to protect workers who are not covered by the Act. Despite various legal and policy protections, the number of workers with unstable and insecure jobs remained high, with job instability being higher among females and those employed in rural areas. The problem worsened during the period under review due to economic depression induced by COVID 19 and recovery remained slow.

Right to safe work environment – The Factories Act, the Occupational Safety and Health Act and the Mines and Minerals Act are the main pieces of legislation dealing with safety and health issues. A number of International Labour Organisation Conventions pertaining to a safe working environment have been ratified and implemented in national legislation. The biggest challenge to maintaining a safe work environment in Zambia lies in the inadequacies of the mechanisms created to monitor and enforce regulations. Enforcement of safety and health legislation is severely constrained by inadequate institutional capacity compounded by poor funding which results in inadequate support infrastructure with which to carry out inspections, thus limiting the ability to carry out statutory functions. The fact that the economy is highly informalised means majority of the employers had inadequate to no systems for a safe and health work environment.

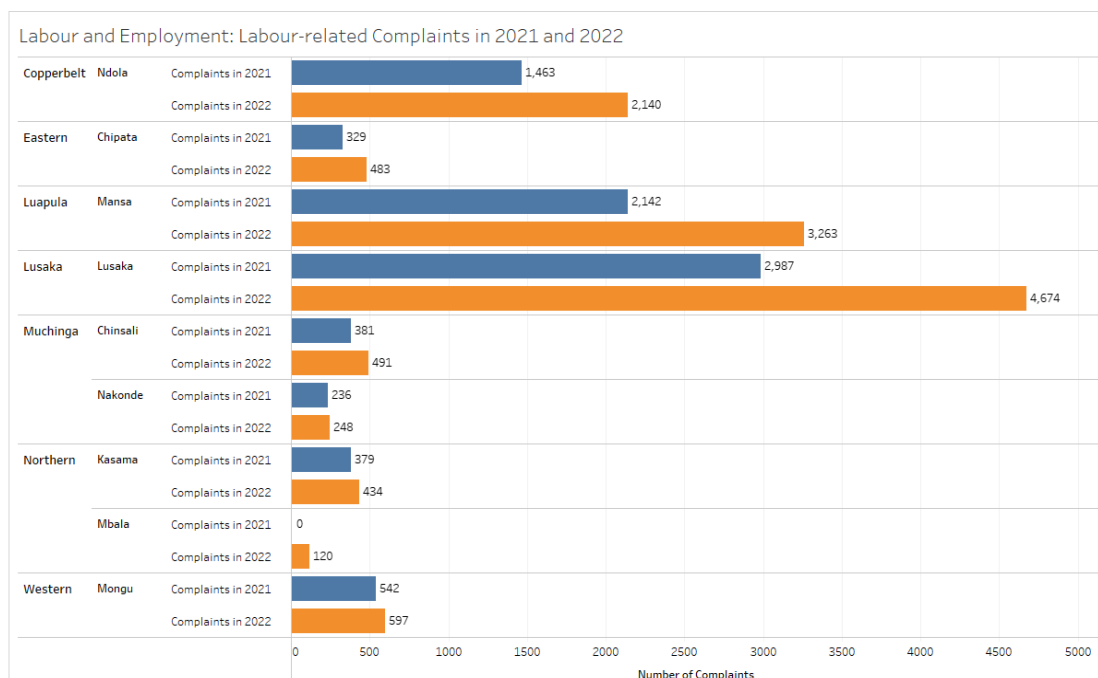
Right to social security –The National Pension and Scheme Authority (NAPSA), Workers Compensation Fund Board, the Public Service Pensions Fund and the Local Authorities Superannuation Fund are the largest State based social security schemes currently operating in Zambia. Social security coverage in Zambia is largely limited to employees in the formal sector. The benefits of social security schemes include cash transfers such as pensions, employment injury benefits, short term cash benefits (sickness and maternity benefits etc.), as well as benefits in kind such as health services. The majority of the population therefore does not have access to any form of social security as they earn their living from informal work, including subsistence agriculture. Other public and non-contributory social schemes are being implemented by the State such as Social cash Transfer Scheme and the Comprehensive Agriculture Support Programme (CASP) (formerly FISP) which target vulnerable persons including the old and those with disabilities. However, the social schemes huge numerous problems including low coverage, predominantly former sector, political interference, inefficient and poor returns to beneficiaries.

Right to engage into social dialogue between workers' and employers' representatives -

The Industrial and Labour Relations Act (ILRA) provides the framework and structure for labour social dialogue in Zambia. The Tripartite Consultative Labour Council (TCLC) is responsible for and has contributed to the review of labour laws and the ratification of some of the International Labour Organisation Conventions. At operational level, employers and unions undertake tripartite social dialogue for the purpose of collective bargaining as provided for under the law. However, problems remain, particularly regarding the low rates of collective bargaining due to the legal exemption for employers of less than 25, including public workers under Security Wings to allow formation of Trade Unions. It is equally noteworthy that in the Zambian setting, the majority of employers are in the informal sector and normally employ fewer than 25 full time workers, mostly on contract and hence the large contribution to lower collective bargaining rate in the country.

In the period under review, Complaints relating to labour and employment rights accounted for a large number of cases that were handled by the Commission. In 2021, the Commission received 193 complaints relating to Labour and employment rights, while in 2022, 550 were received. In the same vein, data obtained from the Department of Labour in 9 districts sampled indicated that, in 2021, they handled 8,459 complaints while in 2022, 12,450 complaints were handled. This huge figure is actually not from all the offices for the department of labour in the country but from selected offices in the country. This indicates that labour and employment rights violations were on the increase. With human rights being interdependent and interrelated, there was a likelihood that other dependent and related rights were affected too. See figure below

Figure 15: Labour and Employment Rights Complaints in 2021 & 2022



Most of the cases handled related to unpaid dues, redundancies, unlawful dismissals, poor working conditions. Cases relating to redundancies were mostly recorded from workers in the hospitality industry and construction sector. This was attributed to the COVID-19 pandemic during which companies, especially in the travel and hospitality industry lost business and were compelled to either reduce operations or close down altogether. The other reason was companies winding down especially in the Construction Sector which attributed their redundancies to cancellation of contracts/prolonged suspension of works while others were due to change of government in 2021 which needed to review and realign some projects.

5.3. Rights of Persons with Disability

The UN Convention on the Rights of Persons with Disabilities (UNCPRD) is the principal international convention on the rights of persons with disability. Zambia ratified the instrument in 2010, and enacted the Persons with Disabilities Act No. 6 of 2012, other laws and policies to domesticate provisions of the convention. The laws and policies set out principles and provisions for promoting and protecting inherent dignity of persons with disabilities and ensure equal enjoyment of human rights, and creates an environment where person with disability enjoys human rights on equal basis with others.

Since ratification of the Convention on the Rights of Persons with Disabilities in February, 2010, Zambia has made significant progress in domesticating provisions of the Convention and enhancing protection and promotion of rights of persons with disabilities. The Zambia Agency for Persons with Disabilities (ZAPD) under the Ministry of Community Development and Social Services (MCDSS) is a legally established coordination mechanism mandated to plan and implement measures to promote the welfare of Persons with Disabilities (PwDs) as provided for under the PwD Act.

However, PwDs still endure high levels of discrimination and inequality in practice due to entrenched negative public attitudes, lack or limited awareness on the rights of PwDs. They continue facing challenges in accessing education, health, employment, empowerment initiatives, land, Sexual Reproductive and Health Services (SRHR) access to information, services, access to justice and electoral services etc.

The majority of public and private infrastructure including roads, schools, banks, hospitals, courts, police stations, public administration offices, hotels and new buildings were inaccessible²⁹. Most public and private buses did not provide accommodations for ease of access for PwDs.

Women and girls with disabilities in particular mostly lived in poverty due to a number of factors, including lack of education, limited economic opportunities and social exclusion. They were more vulnerable to abuse, gender-based violence and discrimination in various forms which constituted a violation of their rights and fundamental freedoms affecting their development and advancement³⁰.

The State has continued its work on aligning relevant legislation to the Convention. In 2019, the Mental Health Act No. 6 of 2019 was enacted to provide for the promotion and protection of the rights of persons with mental illness, mental disorder, mental impairment or mental disability; to establish the National Mental Health Council and provide for its functions; provide for mental health services in correctional facilities; give effect to certain provisions of the United Nations Convention on the Rights of Persons with Disabilities.

²⁹Report of the Special Rapporteur on the rights of persons with disabilities mission to Zambia. See report here 1622404 (un.org)

³⁰Human Rights Commission independent report submitted to the Committee on the rights of Person with Disabilities (CRPD), 2020.

It also gave effect to principles for the protection of persons with mental illness and the improvement of mental care General Assembly Resolution No. 46/119 of 17th December, 1991 and other international human rights instruments to which Zambia is a State Party. The Act primarily repeals the Mental Disorders Act, 1949 which remained misaligned with the Convention.

During the 2021 general election, the State made provisions to enhance participation of person with disabilities including reduced fees payable by persons with disability to contest elections, braille and digital information to facilitate voting.³¹ However, these measures were inadequate to encourage participation of PwDs in the electoral process. Despite the measures taken, two critical factors negatively affected their effective participation and these were; (i) inadequate awareness raising amongst PwDs regarding measures put in place (ii) inadequate or no consultations with them on electoral measures taken and whether the measures would address the barriers affecting their participation. During the 2021 Election, participation of PwDs was as follows:-

Table 8: Participation in the 2021 General Elections by Persons with Disabilities

PWDs WHO CONTESTED DURING THE 2021 GENERAL ELECTIONS							
	Members of Parliament		Local Government		Total		Total
Gender	Male	Female	Male	Female	Male	Female	
Adopted for the 2021 elections	4	1	8	0	12	1	13
Finally Elected	1	0	3	0	0	0	4

Source: Report by Disability Watch, 2022

Unfortunately, out of 13 Persons with Disability that participated in elections, only four (4) were elected into respective positions they contested for, thus, one (1) at National Assembly level and three (3) at local government level. The Commission noted some of the issues raised by PwDs during the last elections including the fact that most polling stations were not accessible to persons with disabilities using assistive devices like wheel chairs. For example, of the 965 polling stations observed, 354 were found not accessible due to lack of facilities such as ramps to facilitate access to polling booths.

5.3.1. Recommendations;

- (i) *Implement the recommendation by the Special Rapporteur on the Rights of Persons with Disabilities to Designate or create an independent monitoring mechanism to monitor the implementation of the Convention in accordance with article 33 (2) thereof; and*
- (ii) *Establish a functional structure at ZAPD as well as provide adequate funding to enable it effectively enforce the PWD Act.*

³¹US Department of Human Rights, Zambia Report for 2022 and observations by HRC

6.0. EMERGING HUMAN RIGHTS ISSUES

6.1. Business and Human Rights

Zambia accepted a Universal Periodic Review (UPR) recommendation to develop a National Action Plan on Business and Human Rights (NAP) in 2017. Since then, very little has been done to align domestic laws and policies to the UN Guiding Principles on Business and Human Rights and other international and regional human rights standards. Even though the Human Rights Commission moved quickly to carry out a baseline assessment to determine alignment gaps with human rights standards, the actual process to develop NAPs is still nascent.

In terms of implementing State obligation to protect against human rights abuses by all actors in society, including businesses, the status largely remains the same. This means the State has not adequately put in place laws, policies and practices to prevent, investigate, punish and redress human rights abuses that take place in and are associated with business operations. Furthermore, the State has not sufficiently set clear expectations that Zambian businesses respect human rights in every country and the context in which they operate.

The status equally remains the same when it comes to enacting and enforcing laws, policies and procedural requirements that compel businesses to respect human rights; creating a regulatory environment that facilitates business respect for human rights; and providing guidance to companies on their responsibilities, as part of State duty to protect human rights. The incoherence of State policy across departments and functions in addressing adverse human rights impacts, and the expectation that their participation in bilateral and multilateral arrangements/agreements is aligned with their human rights obligations, remains problematic.

The baseline study finding that very few business enterprises understood and have put in place measures to prevent, mitigate and, where appropriate, remedy human rights abuses that they cause or contribute to, has not changed much. Relatively few businesses have human rights policies guiding their work to systematically prevent or mitigate any adverse impacts related to their operations, products or services, even if these impacts have been carried out in their value chain.

It can therefore, be argued that very few businesses have policy commitments to meet the responsibility to respect human rights. Second, apart from implementing a legally prescribed Environmental and Social Impact Assessment (ESIA), very few businesses carry out continuous human rights due diligence to identify, prevent, mitigate and account for their human rights impacts. And finally, very few business enterprises have actual processes in place to enable remediation for any adverse human rights impacts they cause or contribute to.

However, the Ministry of Justice has since taken leadership of the process to develop a NAP, as part of implementation of the UPR recommendation made in 2017 and the voluntary pledge made during the 4th Cycle UPR review. A Core Working Group has been established comprising of Ministry of Justice, other key line ministries, Human Rights Commission, UNDP, Diakonia and Zambia Alliance of Women (ZAW), to spearhead the work until a Steering Committee is popularly put in place. Since the establishment of the Core Working Group, a draft roadmap has been developed and a national stakeholder dialogue meeting was held. The dialogue meeting brought stakeholders to speed with what the State through Ministry of Justice is doing regarding development of a NAP.

The dialogue platform also served as an avenue for raising awareness on business and human rights. During the same event the proposed road map was approved by stakeholders, to kickstart the process to develop a NAP.

6.2. Technology and Human Rights

One of the emerging issues in human rights is technology and human rights. From a practical perspective, technology can help move the human rights agenda forward. For instance, the use of satellite data can monitor the flow of displaced people; artificial intelligence can assist with image recognition to gather data on rights abuses; and the use of forensic technology can reconstruct crime scenes and hold perpetrators accountable. Yet for the multitude of areas in which emerging technologies advance the human rights agenda, technological developments have equal capacity to undermine efforts. From authoritarian states monitoring political dissidents by way of surveillance technologies, to the phenomenon of “deepfakes” destabilizing the democratic public sphere, ethical and policy-oriented implications must be taken into consideration with the development of technological innovations¹.

The Commissioner at the Australian Human Rights Commission, Edward Santow, said, “a modern smartphone is millions of times more powerful than the most sophisticated computer that guided the Apollo 11 spacecraft to the moon. It is more powerful even than the best supercomputers of the 1990s, such as IBM’s famous Deep Blue. New technology can improve our lives. Artificial intelligence (AI) is enabling big strides in critical areas such as healthcare and service delivery. Digital communications technology can provide new ways for people with disability and others to connect and participate in community life – something that is more important than ever during the COVID-19 pandemic. At the same time, there are real and profound threats. Poor technology design can exclude people with disability from work, services and the economy. The use of AI can also open the door to a range of dystopian threats – from mass surveillance to unaccountable exercise of power by government and corporations. We have seen worrying uses of AI in areas as diverse as social security, policing and home loans. At its worst, the use of AI can result in unfairness or even discrimination based on characteristics such as race, age or gender².”

In the Zambian context, a concerning phenomenon is developing powered by State desire to monitor and control use of cyberspace. This is evidenced by the speedy un consultative development and the enactment of a number of laws including the Data Protection Act (2021), Cyber Security and Cybercrimes Act (2021), the Electronic Commerce and Transactions Act (2021 etc.

Additionally, dedicated infrastructure to collect and manage big data from members of the public was initiated in 2015, the Smart City initiative, after former President Edward Lungu signed a joint framework and financing agreement for the Smart Zambia project, with Huawei as the primary project supplier. Embedded within the Smart City Initiative is the Safe City project presided over by Ministry of Home Affairs. Under this project, the government mounted 24-hour surveillance cameras in public places and on the main road networks. The capital city Lusaka became the first city to install closed-circuit television (CCTV) cameras under the smart city initiative. In late 2019, the City of Lusaka permitted Huawei to mount security cameras across Lusaka at the cost of US\$180 million. Another CCTV camera project was managed by the Ministry of Transport and Communication Road Transport and Safety Agency (RTSA).

¹ Technology & Human Rights | The Carr Center for Human Rights - Harvard Kennedy School

²AHRC_RightsTech_2021_Final_Report.pdf (humanrights.gov.au)

While the objectives of the Smart City Initiative look noble on face value, the implications based on where similar projects have been implemented, suggest there may be detrimental or adversely impact on human rights. There is reason to worry because there is very little consultation on the development of this surveillance system. The idea is honed from Chinese Smart City initiative and it is now known that China currently has the most extensive surveillance system in the world. The country is home to 18 of the top 20 most surveilled cities in the world. Over the years, the country has invested heavily in a comprehensive surveillance system that includes facial recognition cameras, closed circuit television (CCTVs) and sensors. Smart City initiatives follow a top-down approach controlled by the Central government.

The concerns stem from the fact that the laws that currently regulate lawful collection of information and data via electronic gadgets is riddled with arbitrariness and clauses absolutely incompatible with good governance practices. The overall responsive Ministry, Department or Agency for surveillance system is not known. Further, the regulating mechanism for data collection and management will be through the Data Protection Commissioner under the Ministry responsible for communication and this raises questions regarding independence of this Ombudsperson.

7.0. Conclusion

Generally, the trajectory for protection and observance of human rights is indicating an improvement from the last few years. In terms of protection of human rights the State has taken decisive measures through amendment and enactment of laws. The abolition of the death penalty, which previous governments had failed to address, has finally been put to rest through amendment of among others Section 69 of the Penal Code. The act puts Zambia among progressive nations that respect and protect the sanctity of life. The State further amended relevant sections to remove provisions on defamation of the President, a provision that has been used previously to silence fierce critics of the President.

On 28th December, 2022, Zambia signed the prerequisite declaration accepting the competence of the Court to receive cases under Article 5(3) of the Protocol. The signing of the declaration entitles relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34(6) of the Protocol.

The State enacted the Children's Code Act no. 12 of 2022. The Children's Code comprehensively domesticates the CRC and other international human rights standards relating to the rights of the child. Among the positives the Code brings is the amalgamation of protections of children's rights which were previously provided for under different pieces of legislation such as the the Legitimacy Act, 1929, the Adoption Act, 1956, the Juveniles Act, 1956 and the Affiliation and Maintenance of Children Act, 1995. The Act reaffirms in the strongest terms the need to treat children in a manner that puts the interests of the child first. Under the new law, it is mandatory to grant them bail immediately after arrest and the requirement not to hold them in custody. It also creates the Children's Court, specialized in dispensing child justice. These legal reforms trend need to continue. Other laws such as the Cyber Security and Cyber Crimes Act No 2 of 2021, Public Order Act, legislation to criminalise torture need to be repealed/amended and or enacted to further protect human rights.

However, despite these positives, a number of issues remain and casts a gloom shadow over the country. Secure protection of the law remains a problem. Despite the policy directive given by the President on treatment of suspects: that they should only be arrested when investigations have thoroughly been conducted and be brought before Courts of competent jurisdiction, there has been strong resistance by the Police. Police have continued arresting people while investigations are still ongoing. Many people who have been arrested stay for many days, weeks and months before being taken before Courts of law. Incidents of torture are still as rife as before. Police respect for human dignity is non-existent. There is need to institute a mindset change in the Police and bring about a Police service working to serve the people and protect their rights and not to take away the rights.

