**REPUBLIC OF ZAMBIA**



**INPUT INTO THE REPORT ON PROTECTION AGAINST VIOLENCE AND DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN RELATION TO THE HUMAN RIGHTS TO FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY**

**Ministry of Justice**

**January, 2024**

The Republic of Zambia considered the letter from the Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity dated 20th December, 2023. We are pleased to provide the following responses to the specific questions contained in the Letter.

Zambia remains resolute in its efforts to enhance human rights for the well-being of all persons without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.  In this vein, Article 11 of the Constitution of Zambia recognises and declares that every person in Zambia is entitled to the fundamental rights and freedoms of the individual irrespective of their race, place of origin, political opinions, colour, creed, sex or marital status. Additionally, Article 23(3) defines the term discrimination to mean:

*“affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”.*

This Article also prohibits the enactment of any law which makes any provision that is discriminatory either of itself or in its effect and declares that a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

The Republic of Zambia considers same-sex relationships as violating its values, morals and beliefs as enshrined in the Constitution of Zambia, Chapter 1 of the laws of Zambia. The Penal Code, Chapter 87 of the Laws of Zambia criminalises carnal knowledge between persons of the same, whether male or female. Section 155 provides that: -

*155. Any person who-*

*(a) has carnal knowledge of any person against the order of nature; or*

*(b) has carnal knowledge of an animal; or*

*(c) permits a male person to have carnal knowledge of him or her against the order of nature;*

*is guilty of a felony and is liable to imprisonment for fourteen years.*

Further, section 156 provides that: -

*156. Any person who attempts to commit any of the offences specified in the last preceding section is guilty of a felony and is liable to imprisonment for seven years.*

Furthermore, section 158 provides that: -

*158. Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.*

As regards freedom of association and freedom of peaceful assembly by civil society organisations or activist advocating for LGBT persons human rights, the Republic of Zambia does not have laws specifically targeting the freedom of association and peaceful assembly for LGBT rights advocacy groups. The Constitution of Zambia recognizes that every person in Zambia is entitled to freedom of assembly and freedom of association. The right to freedom of assembly is regulated by the Public Order Act, Chapter 113 of the laws of Zambia. The Act requires that Any person intending to assemble or to convene a public meeting, procession or demonstration to notify the Police in writing seven days before the meeting. Section 5 (4) of the Public Order Act provides that:

*Every person who intends to assemble or convene a public meeting, procession or demonstration shall give police at least seven days’ notice of that person's intention to assemble or convene such a meeting, procession or demonstration.*

The purpose of the permit required under the Public Order Act is to ensure that the purpose of an assembly, public meeting or procession is not for an unlawful purpose and that it is unlikely to cause or lead to a breach of the peace. It follows therefore, that civil society organisations or activist advocating for LGBT persons are not permitted to assemble as they advocate for unlawful acts punishable under the provisions of the Penal Code cited above. Further, owing to Zambia’s values and principles, advocating for LGBT issues may cause disruption of the community in the area where the public gathering is held and in the country as a whole.

As regards the existence of bans on the registration of organisations working on LBGT persons human rights or related topics, the Societies Act, Chapter 119 of the laws of Zambia makes provision for the registration and supervision of societies in Zambia. The Act does not permit registration of societies conducting unlawful activities. Consequently, organisations working on LGBT related topics cannot register or organise marches or protests. It is illegal to practice same sex and therefore, it follows that registration of anything that promotes an unlawful act cannot be registered under the Societies Act. Further, the Act prohibits assemblies of unlawful societies and provides that any person who knowingly allows a meeting of an unlawful society, or of members of an unlawful society, to be held in any place belonging to or occupied by him, or over which he has control, is guilty of an offence.

As regards laws, policies and practices which regulate internet use, access and content on the protection and exercise of human rights to freedom of expression, association and/or peaceful assembly by LGBT people, activists and civil society organization, the Cyber Security and Cyber Crimes Act No. 2 of 2021 whose objectives include the protection of persons against cyber-crime promotes the responsible use of media and prohibits the use of computer systems for illegal activities. Section 63 of the Act provides that: -

*63. (1) A person shall not use a computer system for any activity which constitutes an offence under any written law which is not provided under this Act.*

*(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to the penalty specified for that offence in the applicable written law*

As stated above, the Penal code criminalizes consensual sexual behavior between people of the same sex. In this vein, persons are not permitted to use the internet for prohibited activities.