

**JESUIT CENTRE FOR THEOLOGICAL REFLECTION**  
*“Promoting Faith and Justice”*

## SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF ZAMBIA

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### Executive Summary

This submission has been prepared by a group of civil society organizations working in the areas of HIV and AIDS, women's rights, civic and human rights education and social development. The African Women Millennium Initiative in Zambia<sup>1</sup>, Jesuit Centre for Theological Reflection<sup>2</sup>, Treatment Advocacy and Literacy Campaign<sup>3</sup>, Zambia Council for Social Development<sup>4</sup>, Hope for Human Rights<sup>5</sup>, Association for Land Development<sup>6</sup> and Foundation for Democratic Progress<sup>7</sup> are submitting this

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<sup>1</sup> **African Women Millennium Initiative** in Zambia (AWOMIZ) was established in 2007 as a non-government organization dedicated to promote the observance of human rights especially women's rights. The organization works promote and support the mass mobilization of women and young people in reclaiming their rights and entitlements within the social and economic spaces of development in Zambia. AWOMIZ works to engage in policy and law reform advocacy related as well and capacity building for human rights defenders for the betterment of the citizens.

<sup>2</sup> **The Jesuit Centre for Theological Reflection (JCTR)** is a research, education and advocacy team that promotes study and action on issues linking Christian Faith and social justice in Zambia and Malawi. JCTR began in 1988 as a project of the Zambia-Malawi Province of the Society of Jesus and is similar in orientation to other Jesuit social centers around the world. The Centre engages in research on key social issues like cost of living, social implications of debt servicing, accessibility of healthcare and education, and integrity of local democracy.

<sup>3</sup> **Treatment Advocacy and Literacy Campaign (TALC)** was established in 2004 and registered with Registrar of Societies in Zambia. TALC is a membership organization; TALC operates as a national organization with its Secretariat located in Lusaka. The programme seeks to advocate for policy change and an equitable institutional and legal framework which emphasizes on policy change and behavioral change. TALC seeks to address issues of HIV and AIDS through treatment literacy and treatment advocacy covering the entire continuum of treatment.

<sup>4</sup> **Zambia Council for Social Development (ZCSD)** is a national umbrella NGO promoting vibrant, independent, empowered and well-coordinated civil society organizations in Zambia. ZCSD is a leader in governance. The organization has in the recent past adopted methodologies that have fostered evidence-based advocacy. In its quest to attain a just nation, where people are healthy, educated, motivated, and empowered to make informed choices, the organization is implementing a number of projects that are contributing to bettering people's lives in the country.

<sup>5</sup> **Hope for Human Rights** is a non-governmental organization involved in the promotion of the observance of Human Rights in Zambia. It was established in the year 2006 and formally registered with the Ministry of Home Affairs (Registrar of Societies) on the 15th of November 2010.

<sup>6</sup> **The Association for Land Development (ALD)** is a non-governmental organization working with poor and marginalized rural and urban communities to promote their land rights through lobbying for laws, policies and administrative systems that take into account their interests.

<sup>7</sup> **The Foundation for Democratic Process (FODEP)** is a Non-Governmental Organization (NGO) involved in promoting democracy in Zambia through programmes of civic/voter and human rights education and election monitoring since its inception in 1992. FODEP is a voluntary and non-profit making organization which depends on a pool of over 10,000 volunteers spread countrywide for implementation of its programmes and activities. Its overall aim is to promote and protect the institutions and operations of democracy through the active, informed and democratic participation of the majority of citizens in issues of governance.

information to be considered during the Universal Periodic Review of Zambia at the Human Rights Council.

The submission will first of all focus on the domestication of human rights obligations Zambia has adopted under the core UN human rights treaties and assess the progress made since the Zambia's last Universal Periodic Review in 2008. It will then relate the findings to the situation of economic, social and cultural rights before looking more in-depth at the right to health and the right to education.

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- 1) During the 2008 Universal Periodic Review, Zambia recognized that there was a gap in terms of fully incorporating the international human rights instruments that it is party to into the domestic legal framework. The Zambian delegation informed UN member States that this activity was to be completed under Zambia's Fifth National Development Plan (FNDP) 2006-2010<sup>8</sup> and that it supported a recommendation by the Democratic Republic of the Congo to accelerate the domestication of international human rights obligations<sup>9</sup>.
  
- 2) We regret to note that the process of domesticating the treaties has not been completed and in fact it seems that hardly any progress has been made since the last UPR. Instead, the activities had to be carried over into the implementation period of the Sixth National Development Plan (SNDP) 2011 – 2015<sup>10</sup>. This illustrates that the State is not taking seriously its obligations to harmonize the domestic legal framework with the international human rights obligations that it decides to accede to. The Sixth National Development Plan 2011-2015 is the core document outlining Government priorities and programmes during the plan period. The Patriotic Front (PF) party upon taking over power from the Movement for Multi-Party Democracy (MMD) in September 2011 announced that it will revise the SNDP to align the plan to its own priorities but it is presently not clear if and how this process will go ahead.
  
- 3) This lack of serious initiative on the State's side has had particularly negative effects in the area of economic, social and cultural rights which are not included in Zambia's Bill of Rights under the current constitution<sup>11</sup>. They are only principles of State policy which are non-justiciable<sup>12</sup>. The Independent Expert on the Question of Human Rights and Extreme Poverty in her 2010 report on Zambia expressed regret at this state of affairs and recommended that the Bill of Rights be strengthened by including economic, social and cultural rights. She recommended that the issue could be addressed through constitutional reform<sup>13</sup>. Since the return to a multi-party system in 1991, Zambia has undergone a number of constitutional review processes. In all of these review processes, through their submissions citizens and NGOs have expressed a keen interest in including ESCR in the Bill of Rights<sup>14</sup>. In March 2011, the most recent attempt at constitutional review failed when Parliamentarians rejected the Constitution of Zambia 2010 Bill which was based on the work done by the National Constitutional Conference that had been established in 2007. President Sata's Patriotic Front government in November 2011 instituted a Technical Committee to draft a new constitution

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<sup>8</sup> Republic of Zambia, Fifth National Development Plan 2006-2010: Broad based wealth and job creation through citizenry participation and technological advancement, p. 278.

<sup>9</sup> UN Docs. A/HRC/8/43, paras. 8 and 17, A/HRC/8/43/Add.1, para. (h).

<sup>10</sup> "Sixth National Development Plan 2011-2015: Sustained economic growth and poverty reduction" (SNDP 2011-2015), p.22.

<sup>11</sup> Constitution of the Republic of Zambia (1991, as amended 1996), Part III.

<sup>12</sup> Ibid., Part IX.

<sup>13</sup> UN Doc. A/HRC/14/31/Add.1, paras. 7-9.

<sup>14</sup> See the Jesuit Centre for Theological Reflection's 2009 submission to the National Constitutional Conference, <http://www.jctr.org.zm/downloads/nccESCRpresentation09.pdf>, p. 6.

on the basis of 2005 Mung'omba draft constitution<sup>15</sup>. We are pleased to note that the review is to be based on a draft that, if adhered to, would significantly strengthen the Bill of Rights in terms of ESCR and address domestication problems<sup>16</sup>. We recommend the State to work as expeditiously as possible in order to finalize the process of constitutional reform and to honor its pledges to other UN member States and to respect the wishes of the Zambian people when it comes to domestication of human rights obligations.

- 4) While we commend the willingness the State has shown over the years to sign and ratify international human rights treaties for the benefit of all Zambians, we are concerned about the shortcomings in giving effect to these obligations. This has been especially prominent in the area of economic, social and cultural rights which are not included in the Bill of Rights. We also urge the State to take its reporting obligations on economic, social and cultural rights seriously and to inform the public on the status of the country's second periodic report to the Committee on Economic, Social and Cultural Rights, which has been overdue since 30 June 2010. We recommend the reporting process to be conducted in a participatory and transparent manner.
- 5) We recommend that Zambia sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights so that its citizens are given the opportunity to benefit from a communications procedure to address grievances related to economic, social and cultural rights. As in the case of the Bill of Rights, it is our demand that ESCR should be treated the same as civil and political rights, where Zambians have had the opportunity to submit communications to the Human Rights Committee since 1984.
- 6) When reviewing the state of ESCR in Zambia, the Committee on Economic, Social and Cultural Rights (CESCR) expressed concern about a number of factors impeding the Zambian population from realizing their right to the highest attainable standard of health (right to health), such as the low coverage and quality of the health care system, the insufficient financial resources allocated to the health sector, and the brain drain of health professionals due to poor conditions of service in the sector. The Committee furthermore underlined the devastating impact of HIV and AIDS on the enjoyment of ESCR by the people of Zambia and expressed its concern that people suffering from HIV and AIDS seldom have adequate access to the necessary health care services<sup>17</sup>.
- 7) Since 2005, Government has shown commitment to improved service delivery in the health sector and has for example been able to significantly increase the number of people receiving antiretroviral therapy (ART) from 30,112 in 2005 to 283,863 in 2009<sup>18</sup>. During the last UPR, Zambia accepted a number of right to health-related recommendations which included improvements in neo-natal and child health and access to ART for vulnerable

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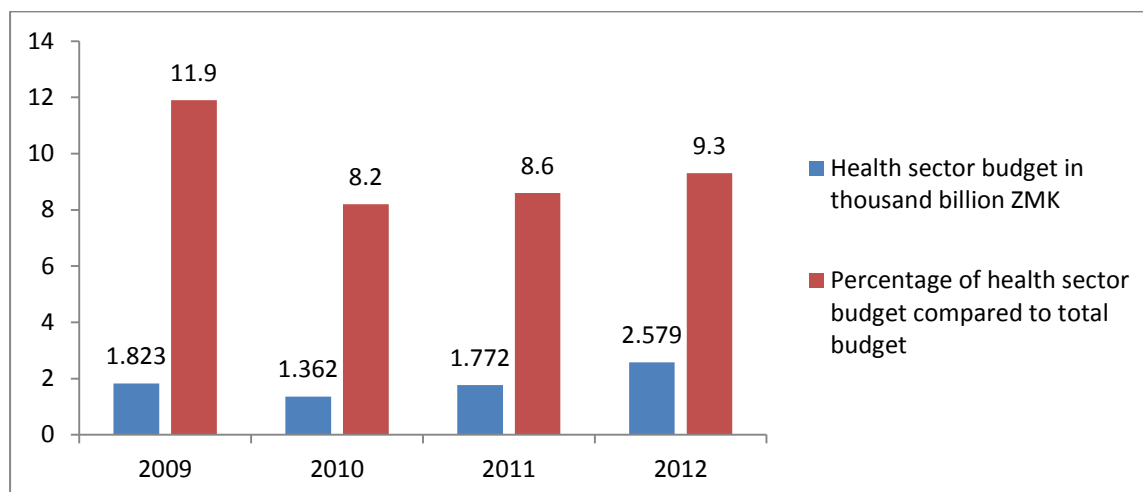
<sup>15</sup> See article from Zambia Daily Mail, <http://www.daily-mail.co.zm/index.php/politics/1594-constitution-annel-silungwe>

<sup>16</sup> Republic of Zambia, Report of the Constitution Review Commission (2005), p. 195-6.

<sup>17</sup> CESCR, E/C.12/1/Add.106 (2005), paras. 29 and 30.

<sup>18</sup> UNDP, Zambia Human Development Report 2011: Service Delivery for Sustainable Human Development (ZHDR 2011), p. 10.

groups<sup>19</sup>. Furthermore, after several years of civil society advocacy on increased budgetary allocations to the health sector, the Minister of Finance in 2011<sup>20</sup> pledged to progressively increase the health budget in the coming years until at least 15% of the annual budget is devoted to health in line with the Abuja Declaration<sup>21</sup>. Zambia's health budget since 2008 has remained far below the required amount to achieve progressive realization of the right to health and the 15%-target has never been met:



\* Data from the respective Budget Address by the Honourable Minister of Finance to the National Assembly (30 January 2009, 09 October 2009, 8 October 2010 and 11 November 2011)

- 8) Despite some encouraging developments we wish to express our view that the health sector in Zambia is still facing considerable challenges as a result of which many Zambians are failing to realize their right to health. This is illustrated by the fact that when comparing Zambia to its neighbouring countries, only conflict-torn Democratic Republic of the Congo has a lower life expectancy<sup>22</sup>. We see these challenges mainly in accessibility of health infrastructure and essential medicines, insufficient quality of health care because of lack of human resources and lack of a coherent policy framework. Also, as civil society we urge Government to pay more attention to equity and allocate adequate budgets to programmes which will enhance access for the poorest and most vulnerable in society. There have been concerns with regard to the Government's policy of routinely referring complicated cases abroad because of lack of capacity to deal with these in Zambia. This programme has incurred great cost at the expense of the poor and there are suspicions that it has been misused to the benefit of patients with influence who would in fact be able to cover treatment costs<sup>23</sup>.

<sup>19</sup> UN Doc. A/HRC/8/43, para. 58 (16 and 17).

<sup>20</sup> Hon. Minister of Finance Alexander Chikwanda, Budget Address to Zambian National Assembly, 11 November 2011.

<sup>21</sup> Abuja Declaration of the African Summit on HIV/AIDS, Tuberculosis and other related infectious Diseases (2001), para. 26; [http://www.un.org/ga/aids/pdf/abuja\\_declaration.pdf](http://www.un.org/ga/aids/pdf/abuja_declaration.pdf)

<sup>22</sup> UNDP, Human Development Report 2011: Sustainability and Equity – A Better Future for All, dataset (HDR 2011 dataset).

<sup>23</sup> ZHDR 2011, p. 72.

- 9) We observe that the health sector is still characterized by a lack of adequate infrastructure. This touches both on the physical accessibility and quality of health facilities<sup>24</sup>, especially in rural areas. The Ministry of Health estimates that nearly 50% of people in rural areas live outside a 5 km radius to a health facility – it even states that “in practice, most rural people have to travel more than 50 km to reach the nearest health facility”<sup>25</sup>. Quality service provision is also impeded by delayed and unpredictable funding to health facilities<sup>26</sup>. Not only are facilities hard to reach for patients, they are often so badly equipped that patients end up sleeping on the floor and not provided the treatment and amenities they require. We urge Government to make sure that all its health facilities meet the requirements in terms of equipment and services provided as laid down in the Ministry of Health guidelines<sup>27</sup>. The Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) in its latest concluding observations confirmed concerns about the situation of health for women in Zambia, observing that there are high rates of maternal mortality and morbidity caused by a lack of access to reproductive healthcare and information and HIV and AIDS treatment especially in rural areas<sup>28</sup>. Presently only 47% of all births in Zambia are attended to by skilled health personnel<sup>29</sup>. This ratio needs to be increased significantly if Zambia is to reduce its unacceptably high maternal mortality rate, which according to the latest available data stood at 470 per 100,000 live births<sup>30</sup>. Maternal mortality is significantly higher in rural settings<sup>31</sup>. Coverage of Emergency Obstetric Care (EmOC) facilities has been scaled up from 18 to 50 districts<sup>32</sup> which is commendable but not enough to provide access for all women in need. The Ministry of Health in 2011 observed that only 12 out of 72 districts had at least 4 functioning EmOC facilities and only 20% of all complicated pregnancies are treated in quality EmOC facilities with staff trained in emergency obstetric care<sup>33</sup>.
- 10) This is further aggravated by the ongoing human resource crisis in the health sector. Especially in rural areas, staff numbers are often significantly lower than the Ministry of Health provision for a given health facility. Also, conditions of service in rural areas are such that they result in high levels of absenteeism or lack of motivation on the side of health personnel<sup>34</sup>. According to the most recent data, there is a gap of about 60% to the recommended staffing levels in the health sector and we continue to see “a significant

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<sup>24</sup> Following the AAAQ approach as outlined by CESCR in its General Comment No. 14 on the right to the highest attainable standard of health (2000), para. 12.

<sup>25</sup> Ministry of Health, 2011 Action Plan, pp. 7 and 16.

<sup>26</sup> Civil Society for Poverty Reduction (CSPR), Budget Tracking and Service Delivery Monitoring Barometer documentation.

<sup>27</sup> See lists of minimum essential equipment in Ministry of Health, Action Planning Handbook for Health Centres, Health Posts and Communities (2009), p. 45 ff. and Action Planning Handbook for Hospitals (2009), Annex 9. For list of specialist services in First, Second and Third Level Hospitals see Action Planning Handbook for Hospitals, Table 1.

<sup>28</sup> UN Doc. CEDAW/C/ZMB/CO/5-6 (2011), para. 33.

<sup>29</sup> HDR 2011 dataset.

<sup>30</sup> Ibid.

<sup>31</sup> ZHDR 2011, p. 10.

<sup>32</sup> Ibid., p. 21.

<sup>33</sup> Ministry of Health 2011 Action Plan, p. 8.

<sup>34</sup> CSPR Barometer documentation.

number of rural health centres run by unqualified staff" (Ministry of Health)<sup>35</sup>. Staff-patient daily contact ratios indicate a much higher workload for health workers in rural areas which illustrates that existing staff levels are far below what is needed to meet the health demands of the population<sup>36</sup>. In fact, Zambia has a very low staff-to-population ratio which stands at 0.93 health workers per 1,000 people which is far below the WHO standard of 2.5 per 1,000<sup>37</sup>. Zambia's health workforce needs urgent expansion and productivity of staff needs to be improved.

- 11) Despite some improvements, there are still significant challenges in accessing essential medicines and there continue to be stock-outs<sup>38</sup>, especially in rural areas. Government in the SNDP health chapter confirmed that logistics management in the supply of drugs and other medical goods remained weak and that availability of essential drugs stood at 82% at the end of 2010, with the sector still facing challenges in terms of stock-outs and laboratory services<sup>39</sup>. The Ministry of Health has stated that its estimated annual budget for drugs and medical supplies is usually underfunded by about 40%<sup>40</sup>. During stock-outs, rather than being given medicine patients often get a prescription for medicines that they cannot afford to buy from the pharmacy. The challenge of providing essential medicines is especially grave when it comes to Anti-Retroviral Therapy (ART), which we think should be scaled up so that every Zambian in need can access it. It is estimated that currently about 80% of all people requiring ART are actually accessing treatment<sup>41</sup>. We are aware that presently not all health facilities in the country provide ART despite the seriousness of the HIV and AIDS epidemic in Zambia. We concur with CEDAW who recently bemoaned the shortage of personnel, inadequate infrastructure, health care facilities and safe spaces for women living with HIV, particularly in rural areas<sup>42</sup>. The National AIDS Strategic Framework 2011-2015 (NASF) recognizes the rural-urban dichotomy in access to ART services and an inadequate focus on vulnerable populations<sup>43</sup>. It states that 81 % of all ART clients are in urban areas and only 19 % in rural areas<sup>44</sup>. While infection rates and thus the potential need for ART are higher in urban areas, this is nevertheless disturbing as according to the latest census data 61% of all Zambians still live in the rural areas<sup>45</sup>. According to the NASF, the priority strategy is to ensure universal access to treatment, care and support but looking at the outputs and programmes under ART we see that the government will only endeavor to roll out ART to

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<sup>35</sup>This is acknowledged and bemoaned both by Government institutions and civil society: Ministry of Health 2011 Action Plan, p. 7; National AIDS Strategic Framework 2011-2015: Towards improving the Quality of Life of the Zambian people (NASF 2011-2015), p. 12; CSPP Barometer documentation; CSPP, JCTR and Caritas 2012 Post-Budget Submission to Parliament, p.18, Zambia Human Development Report 2011, p. 73.

<sup>36</sup>ZHDR 2011, p. 69.

<sup>37</sup>Ibid., p. 73.

<sup>38</sup>Please refer to campaign website <http://stopstockouts.org/tag/zambia/> for more information.

<sup>39</sup>SNDP 2011-2015, p. 85.

<sup>40</sup>This is the budget for drugs and medical supplies excluding vaccines, ARVs and coartem which is estimated at K 150 billion but usually only K 90 billion are available, Ministry of Health 2011 Action Plan, p. 7.

<sup>41</sup>ZHDR 2011, p. 74.

<sup>42</sup>UN Doc. CEDAW/C/ZMB/CO/5-6 (2011), para. 35.

<sup>43</sup>NASF 2011-2015, p. 11.

<sup>44</sup>Ibid., p. 14.

<sup>45</sup>Preliminary results of 2010 census as released by State House, <http://www.statehouse.gov.zm/index.php/component/content/article/48-featured-items/2541-zambias-population-now-13-million-census>.



“most” health facilities at community level and targets only 90% of adults in need of ART by 2015<sup>46</sup>. We encourage government to be more ambitious so that every Zambian in need of ART can actually access treatment and thus fulfill his or her right to health. Also, we would like to underline that providing ART services is not just about providing the actual medicine, but includes Voluntary Counselling and Testing services (VCT) as well as diagnostic services like CD4- and viral load determination. Government must see to it that these services which are all relevant to ART are offered to patients in an integrated manner with a view to reducing the burden on people living with HIV and AIDS. We have found cases in the Lusaka area, which still has comparatively good health service coverage, where patients from their first point of access (VCT at Chilanga rural health centre) were referred twice (to Chawama clinic and then Kalingalinga clinic) before all the diagnostics were in place for them to start ART<sup>47</sup>. A look at the relevant Ministry of Health Planning Handbooks<sup>48</sup> reveals that CD4 machines are not part of the essential equipment for health centres, so the rural population has to apparently access at least a First Level Hospital in order to determine their CD4 count, which will often be beyond their reach.

- 12) We believe that the State could significantly improve its service delivery in health if it put in place a sound and coherent policy framework grounded in a right to health-approach. Different approaches and policies have co-existed for the past years which have not been properly monitored and integrated into a consistent and aligned overarching strategy<sup>49</sup>. One case in point is government’s decision in 2010 to procure mobile hospitals at great cost when at the same time investing into permanent rural health infrastructure, a move that was heavily criticized by many stakeholders<sup>50</sup>. We are also concerned that cooperating partners have continued to play a major role in funding and technical support to health initiatives, especially when it comes to HIV and AIDS. This situation is in our view is not financially and institutionally stable. We have observed in our work on the ground that the lack of integrated health services results in a great burden on patients as they have to move from one specialist clinical officer to another. If a patient is for example diagnosed with malaria, TB and HIV they may have to be in three different queues in a row, which is unacceptable for a person in bad health. It contravenes the ‘Health Reform Vision’ developed by the Ministry of Health which aims at integrated delivery of interventions and quality health care as close to the family as possible<sup>51</sup>. We urge the State to finalize the review of the 1992 National Health Policy, to develop a comprehensive National Health Service Act and to finalize and adopt the Basic Health Care Package until 2015 at the latest, as envisaged by the SNDP<sup>52</sup>.

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<sup>46</sup> Ibid., p. 39.

<sup>47</sup> This has been established through the research of Treatment Advocacy and Literacy Campaign (TALC), one of the submitting organisations.

<sup>48</sup> See lists of minimum essential equipment in Ministry of Health, Action Planning Handbook for Health Centres, Health Posts and Communities (2009), p. 45 ff. and Action Planning Handbook for Hospitals (2009), Annex 9.

<sup>49</sup> ZHDR 2011, p. 63.

<sup>50</sup> CSPR, JCTR and Caritas 2011 post-budget submission, p. 19.

<sup>51</sup> Ministry of Health, Action Planning Handbook for Health Centres, Health Posts and Communities (2009), p.

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<sup>52</sup> SNDP 2011-2015, p. 86-7.

13) We would also like to draw attention to the services provided by hospices. Currently hospices in Zambia are run as private initiatives, mostly supported by the churches. Recently some hospices have encountered financial problems, as the support they receive from institutions like the Global Fund to Fight AIDS, Tuberculosis and Malaria is supposed to be supplementary and not designed to cover all operational costs. One case is Our Mother of Mercy hospice in Chilanga, near Lusaka. The hospice caters for about 5,000 people, offering them amongst others ART services and nutritional support. However, because of funding challenges the hospice has been forced to temporarily suspend its inpatient services which has resulted in a lot of challenges for the vulnerable who used to access services from this centre. We are very concerned by this development and wish to underline the importance of the services offered by hospices, especially for the most vulnerable and marginalized. We encourage Government to consider stepping in to address these issues, for example by taking up the hospice workers as Ministry of Health staff. The Ministry of Health should create an enabling legal and policy framework with a view to achieving a sustainable solution regarding the services provided by hospices.

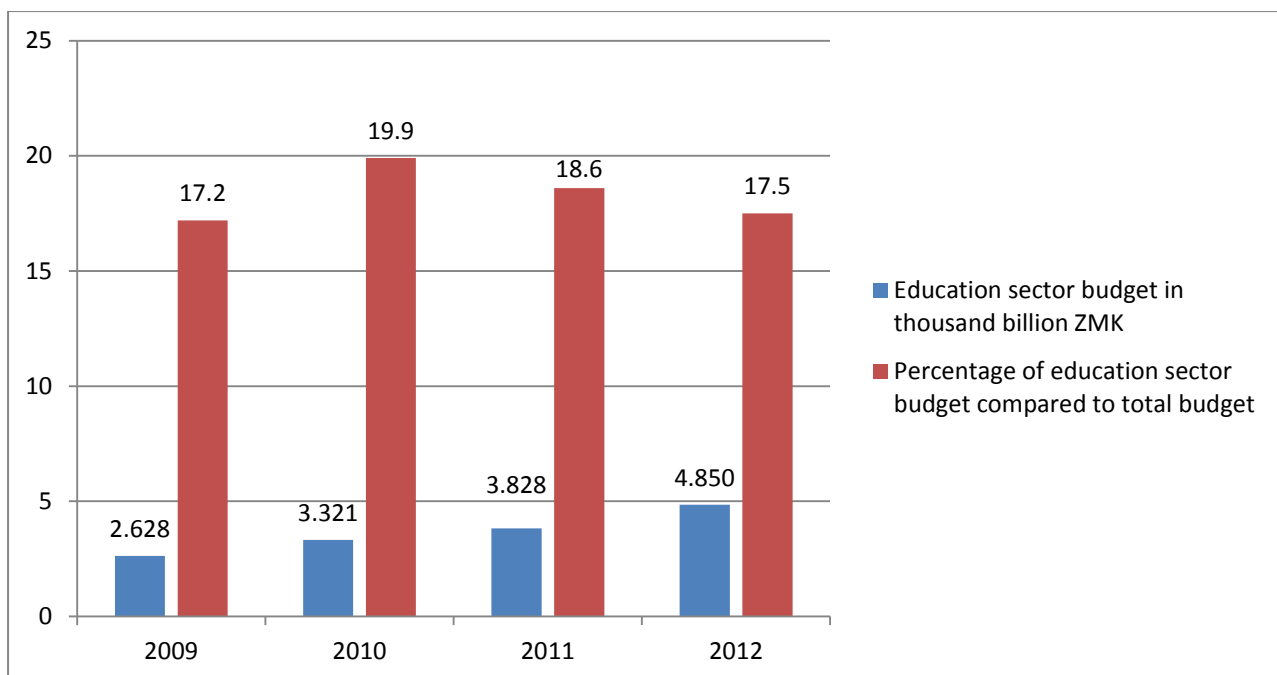
14) In the area of education, Zambia has also been able to take some positive steps towards fulfilling the right to education for its citizens, especially at primary education level. Net enrolment rates have reached very high levels and gender equality, at least in primary education, has improved. This was also recognized by CEDAW in its latest concluding observations of 2011<sup>53</sup>. We commend the recent announcements by Government to expand the removal of user fees up to grade 10 and to promote early childhood care and development (ECCDE), an area that has been severely neglected by the State up to now with only 10% of children accessing ECCDE<sup>54</sup> services. In the last UPR a number of recommendations were addressed to Zambia regarding the right to education, among them to continue its efforts to improve the education system and to develop a strategy for human rights education, including the review of and revision of curricula and textbooks, the training of teachers, and the practice of human rights in the school community<sup>55</sup>. While the education budget has over the past four years been much larger (both in nominal and percentage terms) than that of the health sector, there are still concerns that not enough public funds are committed in order to progressively realize the right to education for all.

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<sup>53</sup> UN Doc. CEDAW/C/ZMB/CO/5-6 (2011), para. 29.

<sup>54</sup> ZHDR 2011, p. 55.

<sup>55</sup> UN Doc. A/HRC/8/43, para. 58 (13 and 14).



\* Data from the respective Budget Address by the Honourable Minister of Finance to the National Assembly (30 January 2009, 09 October 2009, 8 October 2010 and 11 November 2011)

15) While Zambia has made some significant progress in putting up school infrastructure in the period since the last UPR, this has been heavily skewed towards primary schools. There is still a challenge to cater for those wishing to progress to secondary school, especially in rural areas. With the removal of user fees beyond grade 7, pressure on secondary schools will increase. Furthermore, physical accessibility<sup>56</sup> remains a challenge in the rural areas. Often community schools have stepped in to cater to pupils who are very far away from a Government school. These, however, have their own challenges as they often used dilapidated (if any) infrastructure and experience challenges in recruiting teachers<sup>57</sup>. Government will have to step up its efforts, especially at secondary school level, in order to bring education closer to the people.

16) We are very concerned about the quality of teaching in some of our schools. We observe that those who can afford it send their children to private schools as the public sector faces severe challenges in terms of quality service delivery. The pupil-teacher ratios remain unacceptably high and pupils do not benefit from quality teaching materials. At 1:60.5<sup>58</sup>, the pupil-teacher ratio in primary education is one of the highest in Africa<sup>59</sup> and hampers quality service delivery. Also, the Ministry of Education needs to step up its efforts of monitoring service delivery, especially as regards teacher presence and teaching methods. At

<sup>56</sup> In line with the requirements on the right to education as outlined by CESCR, General Comment No. 13 (1999), para. 6.

<sup>57</sup> ZHDR 2011, p. 58.

<sup>58</sup> HDR 2011 dataset.

<sup>59</sup> ZHDR 2011, p. 58.

community schools, which have been the largest contributor to the increased number of schools in recent years, there are significant quality concerns because they often lack infrastructure and many teachers are untrained and have less than grade 12 qualifications<sup>60</sup>. As a result of these quality concerns, completion rates both at primary and secondary schools remain very low<sup>61</sup>.

17) The insufficient availability of resources to comprehensively implement free primary education has been criticized<sup>62</sup>. Also, the interpretation of free primary education continues to vary, even concerning whether it applies up to grade 8 or 9<sup>63</sup>. The 2011 Education Bill is also rather ambiguous when it comes to monetary contributions – while it proclaims that there shall be no admission and tuition fees in basic education, it also mentions the collection of general purpose funds and other fees and charges at public education institutions regardless of their level<sup>64</sup>. Interestingly, the Bill defines basic education as reaching from ECCDE up to grade 9<sup>65</sup> and as stated above there are hardly any State services in ECCDE, so the state of affairs is far from providing basic education without fees. In practice tuition, exam, construction and uniform fees continue to be associated with the purported ‘free’ basic education<sup>66</sup>. These indirect costs can constitute disincentives to the enjoyment of the right to education just like directly imposed school fees, as the Committee on Economic, Social and Cultural Rights has rightly pointed out<sup>67</sup>. The policy of cost-sharing results in parent-teacher association fees still applying at primary school level, and communities are required to meet at least 25% of costs in school infrastructure construction and rehabilitation projects. If this 25% contribution is not raised, it might result in a particular school being excluded from Government grant payments. It is not unusual to find primary schools reporting that they have not received any Government funding throughout a whole year<sup>68</sup>. Funding for grants under the Free Basic Education Programme has remained stagnant between 2009 and 2012, despite the continued expansion of infrastructure, resulting in more primary schools dividing funds between them<sup>69</sup>. We find that primary education, contrary to Zambia’s obligations under the ICESCR, is in fact still not always compulsory and free for all. We urge the State to put in place a coherent policy framework for the sector which is grounded on the right to education for all. Just like in the health sector, the policy framework in education needs to be clarified and more coherent. The ruling Patriotic Front party has announced that it plans to review the Education Act passed in 2011. We commend the party’s pronouncement on plans to reintroduce free and compulsory education from grade 1 to 12<sup>70</sup> and urge Government to take steps towards implementation and provide clarity to service providers in the sector.

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<sup>60</sup> ZHDR 2011, 58.

<sup>61</sup> *Ibid.*, p. 54.

<sup>62</sup> UN Doc. CEDAW/C/ZMB/CO/5-6 (2011), para. 29

<sup>63</sup> ZHDR, p. 54.

<sup>64</sup> The Education Bill 2011, passed by the National Assembly on 15 April 2011, Part XI.

<sup>65</sup> *Ibid.*, Part III.

<sup>66</sup> CSPR, JCTR and Caritas 2012 post-budget submission, p. 23.

<sup>67</sup> CESCR General Comment No. 11 (1999), para. 7.

<sup>68</sup> CSPR Barometer documentation.

<sup>69</sup> CSPR, JCTR and Caritas 2012 post-budget submission, p. 23.

<sup>70</sup> Patriotic Front Manifesto 2011 – 2016, p. 8.

18) We have outlined that Zambia is still facing significant challenges in progressively realizing economic, social and cultural rights for its citizens and have given examples from the education and health sectors. In many instances Zambia is failing to guarantee its minimum core obligations under economic, social and cultural rights. Of course there are resource challenges but in both sectors Zambia has been able to count on the support of cooperating partners over the years. There are also less costly measures which would in our opinion greatly improve the situation in these sectors: we contend that the country would greatly benefit from a human rights-based approach to service delivery in the health and education sectors. We hope that this can be addressed in the short and medium term, especially through the constitutional review process.

#### **19) RECOMMENDATIONS TO ZAMBIAN STATE AUTHORITIES:**

- **To take reporting obligations on economic, social and cultural rights seriously and to inform the public on the status of the country's second periodic report to the Committee on Economic, Social and Cultural Rights, which has been overdue since 30 June 2010. We recommend the reporting process to be conducted in a participatory and transparent manner**
- **To work as expeditiously as possible in order to finalize the process of constitutional reform and to honor its pledges to other UN member States and to respect the wishes of the Zambian people when it comes to domestication of human rights obligations.**
- **To sign and ratify the Optional Protocol to International Covenant on Economic, Social and Cultural Rights so that its citizens are given the opportunity to benefit from a communications procedure to address grievances related to economic, social and cultural rights.**
- **To continue to increase budget allocations to the health and education sectors, with a view to using maximum available resources to progressively realize economic, social and cultural rights for all Zambians;**
- **To take all necessary measures to increase access to quality health care, especially for the poor and vulnerable; this includes prioritizing women's access to health care facilities and medical assistance by trained personnel, especially in rural areas;**
- **To pay more attention to quality service delivery in education, including the regulation of community schools and ECCDE institutions;**
- **To urgently take the necessary measures and adjust policy priorities to cater for the most vulnerable and poor – the human development process in Zambia has been heavily skewed and biased towards urban areas with significantly lower education and health outcomes in rural areas;**
- **To clarify government's commitments in the health and education sectors, especially with regards to programmes under the country's Sixth National Development Plan; and to urgently set up an enabling policy and legal framework in the health and education sectors.**