



# UNIVERSAL PERIODIC REVIEW

## ZAMBIA

### JOINT STAKEHOLDER SUBMISSION

*submitted by*

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**Human Rights Council**

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## **I. INTRODUCTION**

1. Franciscans International (FI) presents this submission concerning the human rights situation in Zambia for consideration by the UPR Working Group at its 28<sup>th</sup> session (6 - 17 November 2017).
2. Franciscans International is an international non-governmental organisation advocating at the United Nations for the promotion, protection, and respect of all human rights, and for environmental justice. FI relies on the expertise and first-hand information gathered from a large network of partners working with the most disadvantaged and marginalised individuals and communities worldwide, to ensure that their voices are heard at the international level. FI has General Consultative Status with the UN Economic and Social Council (ECOSOC).
3. Edmund Rice International (ERI) is an international non-governmental organization, founded in 2005 and with Special Consultative Status with ECOSOC since 2012. ERI is supported by two Catholic Religious Congregations, the Christian Brothers and the Presentation Brothers. It works with networks of like-minded organizations and in the countries where the two congregations are present. ERI has a special interest in the rights of the child, the right to education and in eco-justice.
4. Fondazione Marista per la Solidarietà Internazionale (FMSI) is an NGO in Special Consultative Status with ECOSOC, which has a special focus on promoting and protecting the rights of children. It was established in 2007 in Italy as a not-for-profit organization with a social purpose (FMSI-ONLUS) and has a presence in nearly eighty countries.
5. This report is based on the evaluation of the commitments made by the Government of Zambia to implement recommendations accepted during its previous UPR. The data and information obtained for this submission came from various sources, including first-hand information from field partners serving individuals and groups affected by human rights abuses in Zambia.
6. The analysis will address the following issues of concern: (1) child marriage and (2) the impact of mining on human rights and the environment.

## **II. CHILD MARRIAGE**

### *A. Second-cycle UPR Recommendations*

7. During its previous review by the UPR Working Group, Zambia accepted recommendations calling for adoption of measures to ensure that statutory law prevails over customary practices in case of conflict, especially on family matters, and to bring its domestic legislation in line with its international obligations under the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), especially in relation to marriage and family relations. It was also recommended to train customary and traditional courts administrators on the CEDAW provisions and statutory law which

guarantees the rights of women and girls, including regarding marriage and family relations.<sup>1</sup> Moreover, recently the Committee on the Rights of the Child (CRC) has expressed concern about the persistence of child marriage in Zambia and has recommended the Government to “implement in practice the minimum age of marriage at 18 years.”<sup>2</sup>

### *B. Legal and Institutional Framework*

8. The Government of Zambia has shown firm commitment and made significant efforts towards eradicating the practice of child marriage. In 2013, the Government launched a National Campaign to End Child Marriage. The campaign has found a large support from the traditional leaders who are playing a crucial role in raising awareness of the negative impacts of child marriage in their communities. Their engagement is extremely important given that child marriage in Zambia is mainly driven by some traditional practices and beliefs widely practiced in several communities, especially in rural areas. Moreover, an inter-ministerial Committee of five ministries<sup>3</sup> dealing with youth welfare have recently joined efforts towards eradicating child marriage and teenage pregnancies. A National Strategy on Ending Child Marriage (2015-2020) has been adopted, with valuable inputs from civil society, whose goal is to reduce child marriage rates by 40% by 2021. The strategy emphasizes, *inter alia*, the need of legislative and policy reforms to ensure consistency in the approaches taken towards the protection of children’s rights and awareness raising on the effects of child marriage to foster changes in attitudes, beliefs, and practices that encourage child marriage.<sup>4</sup> In the same vein, in 2016, the Government of Zambia adopted a five-year national action plan (2016-2021) for the implementation of the national strategy on child marriage.
9. Notwithstanding, as also indicated in the national strategy, there is an urgent need for a law reform to harmonize legislative provisions on marriage and ensure their compliance with international human rights law. This includes the necessity to accelerate the process of adoption of the Marriage Bill (2015) which covers various forms of marriages, including customary, civil, and religious marriage. The minimum age of marriage needs to be harmonized and to be in line with international standards. The Marriage Bill is a step forward as it bans child marriage, sets the minimum age of marriage to 18 and provides for free consent to marriage by both parties. However, in the meantime the current Marriage Act will continue to apply. It sets the minimum age of marriage to 21 years allowing that with consent from their parents or guardians individuals can get married even before this age<sup>5</sup>, encouraging in this way the practice of child marriage. Furthermore, the failure of the

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<sup>1</sup> A/HRC/22/13, 31 December 2012, recommendations 103.17 (Finland), and 103.27 (Uruguay).

<sup>2</sup> CRC/C/ZMB/CO/2-4, 14 March 2016, para. 24.

<sup>3</sup> The inter-ministerial Committee consists of representatives from the Ministry of Health; Ministry of Youth and Sport; Ministry of General Education; Ministry of Chiefs and Traditional Affairs; and the Ministry of Community Development, Mother and Child Health.

<sup>4</sup> UNICEF Zambia, “2016: National Strategy to End Child Marriage Launched”, accessible at [https://www.unicef.org/zambia/protection\\_18335.htm](https://www.unicef.org/zambia/protection_18335.htm)

<sup>5</sup> The Marriage Act (Chapter 50 of the Laws of Zambia), Article. 10 (2) stipulates “(...) that each of the parties to the intended marriage (not being a widower or widow) is not less than twenty-one years old or that if he or she is under that age the consent hereinafter made requisite has been obtained (which consent must be in writing and annexed to such affidavit).”; According to Article 17 of the same Act “If either party to an intended marriage, not being a widower

referendum of August 2016 to lead to the adoption of a new Bill of Rights has been a missed opportunity in this direction. Whereas, the Children’s Code Bill (2014) has still not been adopted. Both texts contained innovative provisions pertaining to children’s rights, including a clear definition of the child as anyone under the age of 18 years and the setting of the minimum age of marriage to 18.

### *C. Promotion and Protection of Human Rights on the Ground*

10. Zambia is ranked amongst the countries with the highest rate of child marriage with 31 per cent of women aged between 20-24 years first married or in union by the age of 18, while 6 per cent by the age of 15.<sup>6</sup> Data from the 2013-2014 Zambia Demographic and Health Survey indicate that the incidence of child marriage is higher in rural areas than in urban areas. Differences are also evident between regions. The practice of child marriage is widespread in the Northern and Eastern regions and less prevalent in the Western part of the country<sup>7</sup>.
11. Child marriage has major impacts on the development of young girls in Zambia. It has largely contributed to high levels of school dropout, early pregnancies, and HIV/AIDS prevalence amongst young girls. Current statistics indicate that teenage pregnancy is reaching alarming levels<sup>8</sup> and is being associated with many adolescent girls dropping out of school due to their pregnancy. In this regard, the Government has introduced the Re-entry Policy which aims at giving a second chance to young girls who experience early marriage and pregnancy to get back to school. This has had some positive impact encouraging some young girls to stay in school until they complete their secondary education. However, in other cases pregnant girls refuse to go back to school mainly due to stigma from their peers or teachers.<sup>9</sup>

### *D. Recommendations*

12. Our organisations recommend the Government of Zambia to:
  - a) Intensify efforts in terms of raising awareness of the population at large on the negative consequences of early marriages on the development and the welfare of children;

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or widow, is under twenty-one years of age, the written consent of the father, or if he be dead or of unsound mind or absent from Zambia, of the mother, or if both be dead or of unsound mind or absent from Zambia, of the guardian of such party shall be produced and shall be annexed to the affidavit required under sections ten and twelve and, save as is otherwise provided in section nineteen, no special license shall be granted or certificate issued without the production of such consent.”

<sup>6</sup> UNICEF, “The State of the World’s Children 2016: A Fair Chance for Every Child”, June 2016, p. 153, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf), (The data refer to the period 2008-2014).

<sup>7</sup> Zambia Demographic and Health Survey 2013-2014, March 2015, p. 60.

<sup>8</sup> According to the Zambia Demographic and Health Survey 2013-2014, 29 percent of women aged between 15-19 have already given birth or are pregnant with their first child, p. 76.

<sup>9</sup> Restless Development, Zambia National Education Coalition, Camfed, “Position Paper on the Re-entry Policy of the Ministry of Education, Science, Vocational Training and Early Education of September 1997”, accessible at <http://restlessdevelopment.org/file/position-paper-re-entry-policy-3-pdf-pdf>.

- b) Accelerate the legislative reform to comply with international standards and harmonize the existing legislation related to child marriage and the legal age of marriage, in particular the process of the adoption of the Marriage Bill and the Child Code Bill;
- c) Provide education on sexual and reproductive health to prevent teenage pregnancies and sexually transmitted diseases, especially HIV/AIDS.

### **III. THE IMPACT OF EXTRACTIVE INDUSTRIES ON HUMAN RIGHTS AND ENVIRONMENT IN ZAMBIA**

#### *A. Second-cycle UPR Recommendations*

13. This part of the report focuses on some of the major human rights and environmental impacts of mining operations in Zambia. Despite its importance, the issue of natural resources exploitation and its adverse impacts on local communities did not receive sufficient attention during the last review of Zambia by the UPR Working Group. The only recommendation made and accepted by the Government on this topic called to “strengthen the governance of natural resources to ensure, amongst others, their sustainable utilization.”<sup>10</sup>

#### *B. Legal and Institutional Framework*

14. Since the last review, there have been some positive developments in terms of improving the legal and institutional framework regarding the mining sector. In 2015, Zambia amended the Mines and Minerals Development Act<sup>11</sup> which stipulates that “(...) b) mineral resources shall be explored and developed in a manner that promotes and contributes to socioeconomic development and in accordance with international conventions to which Zambia is a party; (c) the exploitation of minerals shall ensure safety, health and environmental protection; (d) wasteful mining practices shall be avoided so as to promote sustainable development and prevent adverse environmental effects; (e) citizens shall have equitable access to mineral resources and benefit from mineral resources development; and (f) development of local communities in areas surrounding the mining area based on prioritisation of community needs, health and safety.”<sup>12</sup> Along the same lines, Section 80 of the Act requires the competent authorities to consider in their decision on whether or not to grant any mining or mineral processing licenses, the need to protect the environment and to ensure that mining or mineral processing activities prevent any adverse socio-economic impact to human health, through *inter alia* the conduct of environmental impact studies.<sup>13</sup>

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<sup>10</sup> A/HRC/22/13, 31 December 2012, recommendation 102.68 (Namibia).

<sup>11</sup> The Mines and Mineral Development Act, No 11 of 2015, accessible at <http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Mines%20and%20Minerals%20Act,%202015.pdf>.

<sup>12</sup> General principles for mining and minerals development of The Mines and Minerals Development Act <http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Mines%20and%20Minerals%20Act,%202015.pdf>

<sup>13</sup> Article 80 of the Mines and the Minerals Development Act.

15. Furthermore, the Act provides for the strict liability of the holder of a mining licence for any harm or damage caused by mining or mineral processing operations or of the person(s) who directly contribute(s) to the act or omission. In both cases, those responsible should compensate the persons affected by the harm or damage and when it affects the human health, the compensation shall include medical expenses, compensations for any disability suffered, and compensation for loss of life. While, when harm and damage is caused to the environment, it is stipulated that the compensation shall include the costs of reinstatement, rehabilitation or clean-up measures, and the costs of preventive measures.<sup>14</sup> Additionally, fair and reasonable compensation shall be provided by the holder of a mining right or mineral processing licence to the owner or lawful occupier of a land upon the request of the latter, “ (...) for any disturbance of the rights of the owner or occupier and for any damage done to the surface of the land by the operations (...)”<sup>15</sup>
16. Another important piece of legislation in this regard, is the Environmental Management Act of 2011 which stipulates that “subject to the Constitution, every person living in Zambia has the right to a clean, safe and healthy environment.”<sup>16</sup> The Act provides for the right to compensation to all victims who have been affected by activities that have caused harm to human health and environment.<sup>17</sup> In the same vein, the draft National Land Policy (2015) emphasizes Government’s intention to “improve the stewardship of mining land by modernising the way in which mining entities stake and explore their claims by giving equal protection to the rights of private and customary landholders.”<sup>18</sup> In this regard, the Government will provide for effective consultations with land rights holders, land sharing with compensation as opposed to evictions and resettlements, and avoid arbitrary displacement of local communities. In cases when displacements are inevitable adequate compensations and resettlement will be provided.<sup>19</sup>
17. The mining industry in Zambia is governed by the Ministry of Mines and Minerals Development through the office of the Director of Mines. Other governmental institutions are involved in issues related to the management of natural resources, such as the Ministry of Lands, Natural Resources and Environmental Protection through its Department of Environment and Natural Resources Management. The Department, amongst others, supervises the work of statutory bodies, including the Zambia Environmental Management Agency (ZEMA) who was established under the Environmental Management Act. ZEMA’s main mandate is “to ensure the sustainable management of natural resources and protection of the environment, and the prevention and control of pollution.”<sup>20</sup> Despite its leading role in environmental protection, ZEMA is lacking the necessary capacities and

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<sup>14</sup> Ibid, Article 87.

<sup>15</sup> Ibid, Article 57.

<sup>16</sup> Environmental Management Act, Section 4 (1).

<sup>17</sup> Ibid, Section 4 (4).

<sup>18</sup> The Ministry of Lands, Natural Resources, and Environmental Protection, The draft National Land Policy, October 2015, Section 7.15.

<sup>19</sup> Ibid.

<sup>20</sup> The Environmental Management Act, 2011, Article. 9, accessible at <http://www.zambialaws.com/Principal-Legislation/environmental-management-act.html>

resources to efficiently assume its mandate, particularly with regard to regularly monitoring the industry after the approval of the projects.<sup>21</sup>

18. Notwithstanding the legislative and institutional measures undertaken to regulate the mining sector in Zambia, several challenges persist to ensure the protection of human rights and the environment in the mining areas. There are gaps in the Mines and Minerals Development Act, especially in relation to prior consultation and meaningful engagement of local communities in decisions that affect them and the provision of adequate compensation in cases of relocation. Moreover, the existing legislation has not been adequately implemented and there is a lack of coordination between responsible institutions.<sup>22</sup>

### *C. Promotion and Protection of Human Rights on the Ground*

19. Zambia is a country rich in natural resources, especially in cobalt and copper, and the mining industry has traditionally constituted one of the main pillars of Zambia's economy. The mining activities are mainly concentrated around the Copper-belt Province and the North-Western regions.<sup>23</sup> Notwithstanding, Zambia ranks amongst the poorest countries in the Human Development Index with the majority of its population still living in extreme poverty<sup>24</sup>.
20. Gathered information and evidence at grassroots level show what the real impact of decades of mining activities in these parts of the country has been. Most of the communities living in and around mining areas have been affected by a wide range of human rights violations and abuses due to mining operations in the region. This part of the report highlights some of the areas of concern demonstrating the government's failure to fulfil its obligation to protect the rights of individuals and local communities affected by the activities of extractive industries.
21. According to testimonies from the ground, a number of communities have been affected by forcible displacement carried out by the mining companies in North-Western Province to pave way for mine development. This has happened mostly in areas where large-scale mining is taking place. The affected communities have not been properly compensated. Some of them who were displaced in 2005, twelve years later, are still struggling for better living conditions. Social services in these communities, such as health facilities, education, safe drinking water, roads, are not adequate. The Government of Zambia has not taken appropriate actions to remedy the situation. When the affected communities are asked, they always say that they were better off where they were before they were displaced. In other cases, local communities have been asked to relocate without previous consultation.<sup>25</sup>

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<sup>21</sup> Lindahl Joanna, "Environmental Impacts of Mining in Zambia: Towards better Environmental Management and Sustainable Exploitation of Mineral Resources", July 2014, p. 14.

<sup>22</sup> Ibid.

<sup>23</sup> Centre for Trade Policy and Development, "Pollution in the Copperbelt Province of Zambia: Case study of Kankoyo", accessible at [www.Counterbalance.org/wp-content/uploads/2013/03/Kankoyo-casestudy-CTPD-CB-2012.pdf](http://www.Counterbalance.org/wp-content/uploads/2013/03/Kankoyo-casestudy-CTPD-CB-2012.pdf), p. 5.

<sup>24</sup> Human Development Index Report 2016.

<sup>25</sup> Caritas Solwezi Annual Report of 2015.

22. Almost all communities, where there is large-scale mining, have complained of pollution of the environment. This pollution concerns the air, the soil, water sources and radiation. In all communities, the water quality is questionable as the water looks coloured. When the mine personnel are told about this they always say the water is suitable for human consumption, but when asked to consume it they decline.<sup>26</sup> It does not only affect the right to safe drinking water, this has also had serious implications on the rights to health and adequate food. People of these communities suffer from various diseases due to environmental damage caused by mining activities. Moreover, it has negatively impacted the agricultural sector as many crops no longer grow in these regions due to the high levels of pollution compromising the ability of small farmer households to produce adequate and sufficient food.<sup>27</sup>

#### *D. Recommendations*

23. Our organisations recommend the Government of Zambia to:

- a) Ensure the effective implementation of the existing legislation and adopt additional legal protections in line with international human rights standards to make sure that the mining operations do not negatively impact the human rights of local communities and the environment;
- b) Provide sufficient human and financial resources to institutions, such as the Zambia Environmental and Management Agency and ensure effective coordination of these institutions to better fulfil their mandates;
- c) Engage in consultations with the concerned communities and ensure their participation in the decision-making processes affecting them, through their direct involvement in the formulation and the implementation of mining projects;
- d) Ensure access to effective remedies and reparations for victims of human rights abuses committed by mining companies.

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<sup>26</sup> Ibid.

<sup>27</sup> Centre for Trade and Policy Development, "Pollution in Copperbelt Province of Zambia: Case Study of Kankoyo", op.cit., p. 5-6.