

AFRICAN UNION

African Committee of Experts on the
Rights and Welfare of the Child



UNION AFRICAINE

Comité Africain d'Experts sur les
Droits et le Bien-être de l'Enfant

الاتحاد الأفريقي

*"An Africa Fit for
Children"*

UNIÃO AFRICANA

P. O. Box 3243 Roosevelt Street (Old Airport Area), W21K19, Addis Ababa,
Ethiopia

Tel: (+251 1) 551 3522 Fax: (+251 1) 553 5716 Website : www.acerwc.org

**CONCLUDING OBSERVATIONS AND RECOMMENDATIONS OF THE AFRICAN
COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD
(ACERWC) ON THE INITIAL REPORT OF THE REPUBLIC OF ZAMBIA ON THE
STATUS OF THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE
RIGHTS AND WELFARE OF THE CHILD**

May 2019

I. INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC/the Committee) extends its compliments to the Government of the Republic of Zambia and wishes to acknowledge with thanks the receipt of its initial report on the status of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter/the Charter) which was submitted in accordance with the State Party's obligation under article 43 of the Charter. The ACERWC considered the initial report of the Republic of Zambia during its 32nd Ordinary Session, which was held from 12 to 20 November 2018 in Addis Ababa, Ethiopia.
2. The Committee also congratulates and appreciates the Government of Zambia for sending its Delegation led by Mr Joe Kapembwa, Permanent Secretary of the Ministry of Youth, Sport and Child Development, with whom the Members of the ACERWC had a productive discussion with. The dialogue indeed helped the Committee to better understand the measures that the State Party has undertaken towards the implementation of the Charter as well as the challenges it is facing. After careful consideration of the facts in the Report and the information provided during the constructive dialogue, the Committee has developed and adopted the following concluding observations and recommendations which, in the Committee's view, provide guidance to better enhance the implementation of the Charter.

II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER

The Committee notes with appreciation the various initiatives the State Party has undertaken to realize children's rights enshrined in the Charter including:

- a. The ratification of various international instruments such as the Convention on the Rights of Persons with Disabilities, the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption the Hague Convention on the Civil Aspects of International Child Abduction;
- b. The adoption of the National Child Protection Policy and the initiative to adopt the Child Code as well as the ongoing legislative reform;
- c. The remarkable inclusion of children in the development of the report and incorporating their views in the report;
- d. The launching of the AU campaign on ending child marriage as well as the adoption of the National Strategy on Child Marriage; and
- e. Efforts to reduce child mortality, establishment of birth registration services in health centers, and building more primary schools in rural areas.

III. FURTHER DEVELOPMENTS, AREAS OF CONCERN AND RECOMMENDATIONS

A. General measures of implementation

Reporting

3. While the Committee congratulates the State Party for submitting its initial report, the Committee regrets that the report was unduly delayed beyond the reporting framework prescribed under the Charter. The Committee recommends that the State Party submits its periodic reports timely and include, in its periodic reports, adequate information regarding the implementation of the current recommendations.

Legislation

4. The Committee notes with appreciation the revision of the Constitution and the Bill of Rights therein. However, the Committee notes that the amendment in the bill of rights did not include issues of children's rights. As the Committee takes note of the fact that the State Party is undertaking consultations to amend the Constitution to revise contentious issues, the Committee strongly encourages the Government of Zambia to consider including children's rights issues in the bill of rights; and in doing so to consult the African Children's Charter, the General Comments of the Committee as well as other international child rights standards.
5. The Committee notes with concern that the Children's Code Bill has not yet been adopted despite the recommendations forwarded to the State Party from the UN Committee on the Rights of the Child in 2016 to expedite the adoption. Hence, the Committee urges the State Party to take concrete steps which lead to the adoption of Bill. It is the Committee's view that time is of the essence in the adoption of the Code as childhood is a time bound period.
6. The Committee further notes that the Zambian Law Development Commission is undertaking a law reform process and the revision has not been finalized. Hence, the Committee recommends that the State Party ensures the timely revision of the laws so that the national laws are in line with the Constitution and international instruments.

National Plans on Children

7. The Committee appreciates the adoption of the National Plan of Action for Children. The Committee recommends that the State Party allocates sufficient budget for its implementation and undertakes mid-term monitoring and evaluation to assess achievements and challenges for improved implementation. The Committee also recommends that the State Party popularizes the Plan among various stakeholders and mobilize technical and financial resources for its implementation.

Coordination

8. The Committee observes that there are various Ministries tasked with children's issues in the State Party including the Ministry of Community Development, Mother and Child Health, and the Ministry of Gender and Child Development. In such cases, the Committee takes the views that it would be paramount for the State Party to establish a strong and effective coordination mechanism among and between various Ministries with a view to avoid sporadic responses. In this regard, the Committee recommends that the State Party establishes a National Coordination Committee for Children, with sufficient budget and clear structure, which provides for a functional framework in which the implementation of children's rights are coordinated.

Budget

9. The Committee notes with concern that the allocated budget allocated for matters of children has decreased between 2016 and 2017; and that budget expenditure before 2016 did not consume the full budget allocated for nutrition, health and education of children. Considering the fact that children in the State Party still suffer from malnutrition, child mortality due to preventable diseases, access to clean water and other related challenges, the Committee recommends that the State Party revisits its budget allocation for child related issues, in particular consider to employ the following measures:
 - Increase the budget allocated for child rights and welfare issues proportional to the population growth and increasing demand;
 - Build the capacity of its institutions working on children to ensure that they have the capacity to effectively utilize the budget allocated for their sectors;
 - Establish a transparent expenditure monitoring mechanism;
 - Ensure that children are consulted in the process of budgeting, particularly on matters which concern them;
 - Assess and identify areas of children's rights issues and welfare services which need more budgeting.

Data

10. The Committee is of the view that disaggregated data on children's matters is crucial for identifying the required amount of budget, functional and relevant policies and programs as well as to make informed decisions and interventions. In this regard, the Committee recommends that the State Party continuously compiles disaggregated data on children based on identified international standards of data collection and analysis.

Independent monitoring

11. The Committee notes with appreciation the existence of the Office of the Commissioner for Children within the Human Rights Commission. However, as per

the latest information the Committee has, the Commissioner for Children has not yet been appointed. If this is the current situation, the Committee recommends that the State Party appoints the Commissioner in the foreseeable future so that the Office becomes fully operational and is capable of discharging its mandate.

Popularization of the Charter and its monitoring mechanism

12. The Committee commends the efforts that the State Party put in place in translating, disseminating and popularizing the Charter. The Committee further commends that the State party consulted children in preparing its initial report and integrated the views of children therein. The Committee, however, notes that the State Party report indicates that these concluding observations and recommendations will be disseminated under the section on dissemination of the State Party report. While noting the importance of the dissemination of these recommendations, the Committee also believes that State Party reports should be widely disseminated. Some reports indicate that stakeholders only participated in the validation but did not have access to the report. The Committee encourages the State Party to widely disseminate the State Party report along with these observations and recommendation among various stakeholders and children. It is the Committee's view that such information sharing lays the ground for collaboration towards the implementation of the recommendations as well as addressing the challenges indicated in the State Party report.

General Observation

13. The Committee makes reference to the Child Friendliness Index regularly published by the African Child Policy Forum where Zambia stood 36th in the 2013 assessment. The Committee notes with concern that the 2018 assessment ranked Zambia at 48th indicating that Zambia is amongst the least child friendly countries in Africa. This shows that the State Party has not progressed in terms of producing child freindly legislations and budgeting processes. The Committee recommends that the State Party takes concrete steps to fast-track the law reform process, put in place mechanisms for its implementation, and increase the budget allocated for sectors concerning the rights and welfare of children.
14. Finally, the Committee encourages the State Party to consult the ACERWC's General Comment no. 5 on Article 1 of the Charter on General Measures of Implementation and System's strengthening for further guidance and better insight.

B. Definition of a child

15. The Committee acknowledges that the State Party is currently undertaking law reform process, which among other things, aims at harmonising the definition of the child with the Charter.

16. While noting the minimum age of marriage which is set at the age of 21 by law, the Committee also notes with concern the exceptional circumstances which allow children to get married before the prescribed age with parental consent and judicial authorisation, according to Section 10 of the Marriage Act, CAP 50. Moreover, the Committee also learns that there are customary laws which operate in the State Party that allow child marriage once the child reaches puberty. In this regard, the Committee urges the State Party to enforce the legally prescribed minimum age of marriage without any exception notwithstanding parental consent or judicial authorisation. The Committee recommends that the State Party ensures that customary law also complies with the minimum age of marriage.
17. Furthermore, the Committee notes that the minimum age of criminal responsibility is set at the age of 8; hence recommends that the State Party revises this age and raise it to the internationally acceptable minimum age for criminal responsibility; which is 12.
18. Furthermore, the Committee notes that a child below the age of 18 years of age can be recruited for military services if his/her parents or guardians give their written consent according to Section 14(2) of the Defence Act CAP 106. The Committee stresses that the Charter, article 22, vividly prohibits the recruitment of children into the military without any exception; hence the Committee urges the State Party to comply with the Charter by amending the Defence Act and remove all the exceptions under which a person below the age of 18 could be recruited in the military.
19. In addition, the Committee notes with concern that Section 2 of the Juvenile Act CAP 53, contrary to the Charter, defines a child as someone below the age of 16. The Committee would like to stress the fact that the Charter, for all purposes, defines a child as anyone who is below the age of the 18 years; hence persons between 16 and 18 are also children and they should be treated as such even in cases where they are in conflict with the law, and not as adults. Therefore, the Committee strongly recommend the State Party to amend Section 2 of the Juvenile Act CAP 53 with a view to harmonise it with the Charter.

C. General principles

Non-discrimination

20. The Committee commends the State Party for including provisions on non-discrimination under the amended Constitution. However, the Committee notes that there is no clear law which specifically protects children in general and children in vulnerable situation, such as children with disabilities, the girl child, from discrimination. The Committee recommends that the State Party, in the draft Child Code, includes a provision which prohibits discrimination on the basis of status, origin, religion, sex, disability, or any ground of the child or his/her parents, guardians or care givers.

21. Moreover, information has been brought to the attention of the Committee that children from Muslim background face discrimination in getting birth registration and nationality. While in its replies to the list of issues, the State Party indicated that no such discrimination exists in law, the Committee has received reports that indicate children with Muslim names or backgrounds face discriminations. The Committee also notes with concern that various reports alledge that children with disabilities are discriminated and stigmatized in society, in schools, health centers and other service sectors. Moreover, girls are reportedly be given a relegated position in families and communities than boys in terms of education, play time, and decision making. There are also indications that children born out of wedlock still face challenges in enjoying their rights to name and inheritance.

22. In this regard, in a situation where the above allegations happen to be true, the Committee recommends that the State Party undertakes the following measures:

- Take measures against officials who discriminate against children with Muslim background in delivering services; and sensitize the community and Government officials about the illegality of discriminating against children on the basis of their religious views;
- Raise awareness about the equal rights of children with disabilities and educating the society, teachers, and others about the rights of children with disabilities; the State Party should also take measures against those who perpetrate discriminatory acts against children with disabilities;
- Review the Legitimacy Act and ensure that children born out of wedlock are not in any way discriminated; and
- Sensitize communities, traditional and religious leaders about the equal rights of women in all undertakings.

Best interests of the child

23. The Committee notes that the National Child Policy and the draft Child Code have provisions on the best interests of the child. While this is commendable, the Committee is concerned about the implementation of the best interest of the child in all aspects of the child's life. Particularly, the Committee notes that the best interests of the child is not provided for in the Constitution, the Juvenile Act, and the Criminal Procedure Code. The Committee is of the view that a strong legal basis for the consideration of the best interest of the child is crucial in the implementation of the principle in all settings including in judicial and administrative procedures. The Committee; therefore, recommends that the State Party considers including the best interest of the child in the Constitution, as well as in other laws, as part of the planned and ongoing reforms.

24. Moreover, as indicated in the State Party report, the Committee is concerned about customary laws and norms that do not take into account the best interest of the child.

The Committee recommends that the State Party establishes a rule that regulates the application of customary laws as they should be in line with the best interests of the child. The Committee also encourages the State Party to continue engaging traditional and religious leaders so that they are cognizant of the best interests of the child in their undertakings and decisions.

The right to life, survival and development

25. The Committee notes with appreciation the various efforts the State Party is undertaking to improve the right to life, survival and development of its children; it also notes the achievements in relation to reducing child mortality and increasing access to improved sources of water. While the Committee notes that the reduction of child mortality is a significant achievement, it is also the view that the right to life of children requires States to undertake positive measures to ensure that children are not exposed to factors that could potentially endanger their lives. It is in this view that the right to life is assessed jointly with the right to survival and development. In relation to positive measures to ensure the right to life, survival and development of children, the Committee is notes that the State Party is amongst the 10 countries in the continent with the highest rate of malnutrition and stunting. The State Party report mentions that malnutrition stands at 40% in 2014 and there has been no improvement in the percentage of children who are underweight. Reports further note that two in five children aged under five are stunted and that only 30% of the population has access to sanitation facilities. The Committee is further deeply concerned that the health budget, according to WHO, stood at only 5% of the total GDP in 2014. Moreover, reports indicate that in 2017 the health budget was reduced due to unsatisfactory consumption of the budget in 2016. The Committee would like to stress that positive efforts to improve the survival and development of children as well as to prevent preventable deadly diseases is an obligation of State Parties under article 1 and 5 of the African Children's Charter. The Committee; therefore, recommends that the State Party:

- To ensure the right to life of all children by preventing diseases that cause child mortality, particularly through an increased immunization coverage, distribution of hygiene facilities, and increased access to clean water;
- To devise strategies to fight malnutrition, link such strategies with agricultural strategies and programs, provide nutrition supplements to malnourished children, raise awareness about nutritious food within items available at household, promote exclusive breast feeding for the first 6 month and continued breast feeding up to 2 years of age;
- To provide food support to communities who are most affected and most economically disadvantaged;
- To increase its budget allocation to the health sector mainly to nutrition, immunization and hygiene with a view to adhering to the Abuja Declaration

which requires States to allocate at least 15% of their total budget to the health sector; and

- To enhance its collaboration with other stakeholders who can technically and financially support the State Party to ensure the right to life, survival and development of children.

Participation of the child

26. The Committee commends the State Party for introducing community mobilization and awareness raising programs to sensitize communities about child participation; as well as for establishing child friendly platforms such as media for child participation. The Committee further recommends that the State Party establishes clear laws and policies to ensure child participation on matters which concern them. The Committee recommends that the State Party expedites the adoption the Access to Information Bill which has been a draft since 2003 and ensure the protection of children's right in this regard.
27. The Committee recommends that the State Party puts further effort in sensitizing families to ensure that they respect children's right to participate on matters which affect them. Moreover, the Committee recommends that the State Party consults children in decision makings processes; in particular, in line with their evolving capacities, the State Party should directly consult children themselves, not their parents, guardians or caregivers, on issues which affect them.

D. Civil rights and freedoms

Name, nationality, and registration at birth

28. The Committee commends the State Party for developing the National Strategy Action Plan on Civil Registration and Vital Statistics; for providing free birth registration and certification; and for undertaking measures to decentralize birth registration services by establishing registration of birth in health facilities. Despite these measures, the Committee notes with concern that only 17% of children in general and 11.3% of under five children are registered. The Committee further notes that the establishment of registration in health facilities will be only capable of ensuring registration of new children, and not children who are currently not registered. The Committee encourages the State Party to:
- Further decentralize birth registration, including the certification, and strive to reach the target of establishing registration centers in at least 50% of health centers by 2020;
 - Introduce mobile registration as well as launch birth registration campaigns to register children who are not registered;

- Undertake extensive awareness raising, especially in rural areas, to inform parents and care givers about the importance of birth registration and if possible provide incentives to encourage registration of children.

29. The Committee recommends the State Party to consult the Committee's General Comment No 2 on article 6 of the Charter for further guidance in this regard.

Freedom of expression, conscience, thought, religion, assembly, and protection of privacy

30. The Committee notes with appreciation the provisions of the Constitution that guarantee fundamental freedoms. The Committee would like to highlight that the realization of fundamental freedoms requires the duty to respect, protect as well as fulfil. Particularly, in the situation of children, States' duty to fulfil their fundamental freedoms by providing positive measures is crucial. In this regard, the Committee recommends that the State Party provides forums and platforms where children can express their views; provide information that are necessary and appropriate for their age in a child friendly manner; and empower children about their rights and freedoms. Moreover, the Committee notes from the State Party report and other reports that the main impediment of the enjoyment of these rights by children are families, communities, and Government officials such as the police. The Committee hence encourages the State Party to educate communities, parents and its officials about the rights of children to fundamental children and how they can assist children to enjoy the freedoms.

Protection against abuse and torture

31. The Committee commends the State Party for the amendment of the Criminal Procedure Code and the Penal Code to prohibit corporal punishment. While noting the amendment of the Penal Code to prohibit battering and assault of children, the Committee notes with concern that it does not make it clear if corporal punishment is prohibited in all settings including at home. Moreover, the Committee is concerned with the Juvenile Act provisions that may be used to perpetrate corporal punishment; particularly the Committee notes with concern article 46(7) which entitles parents to administer punishment against juveniles and article 58(4) of the Juvenile Act's Reformatory Schools Rules which allows caning. There is also no specific provision which prohibits corporal punishment in alternative care centers. Moreover, beyond the normative gaps, the Committee notes with concern the existence of social norms which approve corporal punishment as a proper method of disciplining children.

32. The Committee; therefore, recommends the State Party to compressively revise its laws and ensure that no piece of law gives a gate way to corporal punishment to parents, police, or nay other person in any settings. The Committee encourages the State Party to use the opportunity of the Draft Child Code and ensure that the code

explicitly prohibits corporal punishment in all settings including home, reformatory centers, alternative care centers and other settings. The Committee also recommends that the State Party identifies positive disciplining methods that do not harm the child in any way and promote the same among parents, the police, care givers, staff working at centres where children are kept, and communities. The Committee recommends that continuous sensitization should be undertaken until change of attitude against the use of corporal punishment is achieved in the community.

E. Family environment and alternative care

33. In relation to parental responsibility and supporting families, the Committee commends the State Party for the introduction of the social cash transfer and the establishment of the National Social Protection Policy. The Committee encourages the State Party to strengthen its efforts to support families, particularly families that are economically disadvantaged. The Committee recommends that the State Party allocates increased budget to implement programs targeted at improving the living conditions of families and supporting caregivers to discharge their duties. The Committee also recommends that the State Party adopts the Social Protection Bill.
34. The Committee strongly recommends that the State Party focuses on preserving families and ensuring that children live within a family setting. The State Party should identify and prevent factors that lead to separation of children from their parents, such as abuse and poverty.
35. While appreciating that the State Party has developed the Minimum Standard of Care and Alternative Care Guidelines, the Committee notes from the State Party report that in cases where children are deprived of their family environment, institutional care is the main alternative care provided and more than 6000 children are in institutional care facilities. The Committee recommends that the State Party takes institutional care as a last resort and craft mechanism in which children are deinstitutionalized. The Committee recommends that institutional care is used only as a temporary means until children are placed in a family setting and does not become home for children.
36. With regards to adoption, the Committee commends that the State Party has acceded to the Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption. The Committee recommends that the State Party revises its laws and ensures that inter-country adoption is carried out in line with the principles of the Hague Convention. The Committee encourages the State Party to establish case management system as well as mechanism to monitor the situation of adopted children outside of the State Party. The Committee further recommends that the State Party gives attention to the fact that domestic adoption is very low and hence requires promotion. In this regard, the Committee encourages the State Party to use various platforms including the media to promote domestic adoption and sensitize

communities. The promotion of domestic adoption should also be coupled with Government's support to domestic adoptive parents.

F. Basic health and welfare

37. The Committee appreciates the State Party for undertaking various measures to improve the health and welfare of children including the adoption of the National Health Strategic Plan. The Committee also notes that there is improvement in reducing child mortality, maternal mortality, and immunization coverage. The Committee; however, notes that health facilities are not accessible to all children, especially for children in rural areas. There is also a challenge in relation to the quality of health service provided by the Government. The Committee recommends that the State Party establishes additional health centers in rural areas; ensures that hospitals and health centres have sufficient facilities; and strives to elevate the quality of health services.
38. The Committee notes with concern the increasing incidence of teenage pregnancies. The Committee recommends that the State Party provides sexual reproductive health education to children in schools as well as out of school children and provide sexual reproductive health services in health units both in urban and rural areas.
39. Concerning children with disabilities, the Committee commends that the State Party ratified the Convention on the Rights of Persons with Disabilities and that it amended its Persons with Disabilities Act in 2012 to domesticate the Convention. The Committee also commends the development of the National Disabilities Policy. The Committee recommends that the State Party provides early childhood development care for children with disabilities; ensures that they have access to education and health care services; and allocates sufficient budget for the implementation of the National Disabilities Policy. The Committee also recommends the State Part ratifies the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities.
40. The Committee notes from various reports that lead pollution, especially in Kabwe, is significantly affecting the health and wellbeing of children by affecting their right to clean water and healthy environment. The Committee recommends that the State Party undertakes studies to assess the situation and identify the cause and impact of the pollution. The Committee recommends that the State Party adopts strict regulation and accountability on companies that undertake mining and contribute to the lead pollution. Then Committee encourages the State Party to evacuate children in most affected areas and devises strategies on how to clean the pollution.
41. Various reports, including the State Party report, indicate that there is lack of fund management, coordination, administrative capacities are the major challenges in the health and welfare system that hinder effective implementation of the Charter as well

as the State Party's initiatives. The Committee recommends that the State Party undertakes extensive training and capacity building of those involved in the implementation of health policies and strategies; establish a clear framework of coordination and collaboration underlining the role of concerned Government organs and stakeholders; and seek technical support from non-governmental stakeholders who have expertise in the health and welfare area.

G. Education, leisure and cultural activities

Education

42. The Committee notes the development of the Education Act which tries to domesticate the right to education as enshrined in the African Children's Charter; the provision of free primary education; the increase in the number of primary schools; the recent increase in the budget allocation for the education sector; the adoption of the re-entry policy for girls who get pregnant while they are in school; and the introduction of feeding and bursary programs to support vulnerable children. While appreciating these progressive developments, the Committee has notes the following concerns:
- The disparity on completion rate among urban-rural children as well as boys and girls;
 - Fees levied on parents at primary education for various contributions in spite of the law which makes primary education free;
 - The disproportion in the number of primary and secondary schools as secondary schools are almost 10% of the number of primary schools;
 - The low transition rate from primary to secondary schools due to various reasons including the very low number of secondary schools, inaccessibility of secondary schools, and school fees in secondary schools;
 - High dropout rate of girl's due to teenage pregnancies, child marriage, insufficient hygiene facilities, the low value given to girl's education; poverty and child labour; and
 - Lack of sufficient investment and capacity building for early childhood development and preschool education.
43. Moreover, on inclusive education, the Committee is concerned that many schools do not have necessary infrastructures such as ramps, pathways for wheelchair use to cater for the needs of children with disabilities. The Committee notes that there is lack of trained special needs teachers as well as learning and teaching materials that are accessible for children with disabilities. The challenge is of great magnitude in rural areas as the general poor infrastructure and inaccessibility of schools exacerbates the situation.
44. The Committee therefore recommends that the State Party undertakes the following measures to further progress on the implementation of the right to education:

- Remove any kind of fee in a form of contribution or payments in primary school and ensure that there is free primary education in practice;
- Continue to allocate increased budget to the education sector and build more schools in rural areas and increase the number of secondary school to ensure there is transition;
- Strive towards reducing and further eliminating the fees for secondary education to increase the enrolment rate in secondary education;
- Elevate the quality of education by training teachers, reducing the student to teacher ratio by employing more teachers; increasing contact hours of students; providing sufficient materials to students; providing appropriately equipped classrooms; and ensuring that the libraries in schools are functional;
- Provide sexual reproductive health education in schools; promote re-entry policy; and address the stigmatization of children who get pregnant while in schools;
- Promote girls' education and retention in schools by sensitizing parents and communities about girl's education, fighting child labour and child marriage, creating safe space in schools free of abuse, and providing sanitary pads for girls;
- Devise policy framework for early childhood development, invest on establishing early childhood development centers that have appropriate space, sufficient funding, and trained teachers. The Committee also recommends that proper monitoring and evaluation of such centers is undertaken regularly;
- Renovate schools to ensure that they have the necessary infrastructure to accommodate children with disabilities;
- Train teachers with special needs education and ensure that schools have materials that are accessible to children with disabilities so that inclusive education is fully realized.

Leisure and cultural activities

45. The Committee appreciates the establishment of recreational and reading facilities and provision of playgrounds in schools. However, the Committee notes from the State Party report that there is lack of facilities in such centers and that the centers do not take into consideration the specific needs of children with disabilities. Reports also indicate that public play grounds are being leased to private business who would charge children to access the playgrounds. The Committee recommends that the State Party renovates its reading and recreational centers by providing books that can interest children, facilities that entertain children, and play grounds that can accommodate children with disabilities. In addition, the Committee recommends that the State Party ensures that public playgrounds remain public and free so that children from economically disadvantaged families also have access to leisure and play.

H. Special protection measures

Refugee and displaced Children

46. The Committee commends the adoption of the Refugee Act 2017 which has a specific provision on asylum seeking and refugee children unlike the Refugee Control Act of 1970. The Committee also notes with appreciation that the State Party collaborates with UN agencies on child migrants. The Committee notes that in recent years the number of refugees from neighbouring Democratic Republic of Congo has increased and that over 50% are children. The Committee, while appreciating the establishment of the transition camp in Kenani and the new permanent settlement site in Mantapala, notes with concern the lack of facilities in Kenani camp and the prolonged relocation to Mantapala due to roads that cannot be used in the rainy season. Moreover, the Committee notes that Kenani camp is accommodating beyond its capacity which has resulted in poor facilities, insufficient basic services, and waterborne and other communicable diseases. The Committee, therefore, encourages the State Party to either increase the capacity of Kenani Camp or build roads that take to Mantapala site. In addition, the Committee recommends that the State Party strengthens its efforts to provide basic services, and hygiene materials in both sites.

Children in armed conflict

47. The Committee is delighted to note that the State Party has not suffered from any armed conflict so far. There are, however, cases of violence and political tensions especially during election period. The Committee strongly encourages the State Party to focus on prevention and control such tensions in a peaceful manner. The Committee also encourages the State Party to ensure that children are not engaged in such tensions and are not affected by any political violence. The Committee reiterates its recommendation that the State Party should revise its Defence Act to ensure that children are not recruited in the military in whatsoever circumstance including with parental consent.

Children in conflict with the law

48. The Committee commends that the State Party has established the Child Justice Forum and amended the Zambia Police Act to establish the Community Service Directorate which has child protection and victim support unit. It is also remarkable that the State Party has established child friendly courts, three rehabilitation centers, and is drafting Guideline on bail bond to ensure that children are not detained pre-trial.
49. The Committee, while appreciating these efforts, expresses its concern that diversion for children in conflict with the law is not provided by law and hence has no legal ground. Moreover, children are detained pre and post-trial due to lack of diversion programs, prolonged confirmation orders to enrol in rehabilitation schools as opposed

to being detained in prison cells, and prolonged time to get legal aid from the legal aid board. The fact that the Guidelines on the Bail Bond are not adopted also contributes to the detention of children pre-trial. The Committee is also concerned that very often children are detained with adults as there are no separate cells for children in most prisons. Reports also indicate that, despite the law, detention is not used as a last resort as there are few rehabilitation centers. In addition, lack of basic services in detention centers where children are accommodated has been raised by the UNCRC as well as other reports.

50. The Committee recommends for the State Party to:

- Provide a legal basis for diversion program for children and to ensure that children in conflict with the law are provided with accelerated proceedings;
- Increases its budget allocation to the juvenile justice system to provide for separate detention centers for children; increase the number of rehabilitation centers, and provide sufficient basic needs for children including education, health care, birth registration, access to justice and so forth;
- Ensure that children are not detained with adults in accordance with the law;
- Fast-track the adoption of the Guidelines on Bail Bond;
- Revise the age of criminal responsibility which is currently set at 8 years age;
- Train judges, prosecutors, and police so that they apply detention as a last resort in practice by taking the best interest of the child as the main consideration;
- Ensure that children are enrolled in rehabilitation centers once they are sentenced without waiting for confirmation orders; and
- Expedite the provision of legal aid for children and to this effect create a system where cases of children in conflict with the law are given priority by the Legal Aid Board

Children of imprisoned parents and caregivers

51. The Committee is concerned with the information in the State Party report which states that Prisons Services are empowered to receive children in the prison. The Committee would like to stress that article 30 (1)(d) of the Charter is clear in providing that States are obliged to ensure that a mother shall not be incarcerated with her child. Moreover, the Committee notes with concern that there are no separate cells for mothers/caregivers incarcerated with their children and children imprisoned with their mothers are not provided with special diet and education. The Committee urges the State Party to comply with article 30 of the Charter by ensuring that mothers are subjected to non-custodial sentences whenever possible. In cases where custodial order is a must, mothers imprisoned with their children should be provided with separate cells where there is sufficient diet, early childhood education, health care services, and hygiene facilities. The Committee recommends that the State Party provides for non-custodial sentence as a priority for mothers and the provision of

separate cells for mothers imprisoned with their children in its draft Correctional Services Bill to give it a legal ground. The Committee encourages the State Party to make reference to its General Comment No 1 on article 30 of the Charter for further guidance on addressing issues of children of imprisoned caregivers.

Child Labour and exploitation

52. The Committee appreciates the adoption of the National Child Labour Policy and the Employment of Young Persons Act where the State Party has established minimum working age. Despite these provisions, reports in 2017 provide that close to 30% of children between the age of 5-14 are engaged in child labour. The State Party report also provides that 1.3 million children are involved in child labour. Moreover, children between 13-15 years who are only allowed to engage in light works according to the law and subject to heavy and hazardous works. The Committee is alarmed that the State Party is amongst the 10 countries in Africa where child labour is prevalent. The Committee notes that child labour is also prevalent in the family setting and poverty as well as unemployment of parents result in child labour. The Committee is also concerned that recently the State Party has reduced the number of labour inspectors and the fund allocated to labour inspection.

53. The Committee recommends that the State Party:

- Implements the Employment of Young Persons Act by ensuring that children below the minimum working age are not employed;
- Increases the human and financial resource for labour inspection to ensure that children are not subject to child labour and those engaged are withdrawn;
- Prosecute those who employ children below the working age, in an unacceptable working environment, and in hazardous works;
- Strengthens the social protection support and provision of bursaries to economically disadvantaged parents;
- Devises programs to increase income making capacity of parents; and
- Sensitize communities about the short and long term impact of child labour in the family setting, in agriculture, in industries including extractive industries.

Sale, abduction and trafficking of children

54. The Committee notes with appreciation that the State Party has adopted the Anti-Human Trafficking Act which covers children. However, the Act has missing components in the scope of trafficking as it does not cover smuggling of children, child trafficking without movements, and the special aspect of child trafficking for sexual purposes in which case force, fraud or coercion might not be a requirement. The Committee also notes lack of data on the number of children who are affected by sale, abduction, trafficking and abduction.

55. The Committee recommends that the State Party strengthens its legal framework by ensuring that children who are affected by smuggling, commercial sexual exploitation, and trafficking without movements are provided with legal protection. The State Party is encouraged to increase its efforts to collect disaggregated data of incidents of child trafficking and abduction. Furthermore, the Committee encourages the State Party to increase the capacity of its law enforcement to deal with child trafficking issues including investigation and prosecution. The Committee recommends that the State Party provides rehabilitation, reintegration as well as family tracing and reunification services for victims.

Sexual abuse and exploitation

56. The Committee commends that the State Party amended its Penal Code to stiffen the penalty on sexual abuse against children and adopted the Anti-Gender Based Violence Act, and Gender Equality and Equity Act. The Committee also notes that there is Victim Support Unit and Child Protection Unit in the Police. While these are commendable moves, the Committee is concerned that there is increase in the reported cases of sexual exploitation including subjecting children to prostitution. Children are often sexually abused in the family setting where it is mostly unreported and in some instances results in forced marriage. Children between the age of 14 and 18 are reportedly engaged in prostitution. While reported cases have increased, reports suggest that there is low conviction rate of perpetrators. The Committee further notes that much work is not done to prevent the occurrence of sexual abuse and exploitation.

57. The Committee recommends that the State Party intensifies its efforts to prevent sexual abuse of children by sensitizing communities, engaging traditional leaders, and parents particularly in reporting incidents of sexual abuse. The State Party is encouraged to provide escape shelters for children who have been abused and who would like to escape from further abuse such as forced marriage or perpetuated sexual abuse. The Committee recommends that the State Party ensures the prosecution and conviction of perpetrators by undertaking thorough investigation and strictly adhering to the amendment of Penal Code in rendering sentences. Moreover, the Committee encourages the State Party to increase the capacity of the Victim Support Unit for it to provide appropriate medical and psychosocial support for victims. The Committee also urges the State Party to craft a strategy to address the situation of children engaged in commercial sexual work in all parts of the Country.

Children belonging to minority groups

58. While the State Party report indicates that there are no children from minority groups, other reports provide that the Batwa living by Bangweulu are marginalized and isolated in terms of service provision and inclusion. If this happens to be true, the

Committee recommends that the State Party provides the necessary support to children of Batwa in accessing education, health and child protection services.

Harmful Practice

Child marriage

59. The Committee notes that the State Party has adopted the National Strategy on Ending Child Marriages to combat the scourge of child marriage. Then Committee further commends that the State Party conducted study on child marriage. The Committee notes with concern that according to the finding of State Party child marriage is very high at 40%. In addition, the Committee is concerned with the legal loophole which allows marriage at 16 years with parental consent and the operation of customary law which allows child marriage once puberty is reached.
60. The Committee recommends that the State Party implements the National Strategy to End Child Marriage and in its efforts to do so to engage community and religious leaders as well as parents. The Committee recommends that the State Party ensure that girls are encouraged to attend schools as studies indicate that girls in school are less likely to get married than out of school girls. Furthermore, the Committee reiterates its recommendation that the State Party revises the Marriage Act to ensure that 18 is the minimum age and such age is adhered not only by civil marriages but also by customary marriages. Extensive sensitization and prosecution of perpetrators of child marriage might also be considered in fighting child marriage. In addition, the Committee recommends for the State Party to consider adopting a minimum age for leaving school to prevent child marriage.

Sexual cleansing

61. Then Committee notes that sexual cleansing is practices in parts of the State Party. The Committee commends that the amended Penal Code prohibits sexual cleansing. The Committee recommends that the State Party assesses the prevalence of sexual cleansing in the State Party and undertakes sensitization to eliminate the practice. The Penal Code provisions on the prosecution and conviction of perpetrators of sexual cleansing should be strictly applied.

Children living and working on the street and other vulnerable children

62. The Committee commends the adoption of the National Child Protection policy, establishment of Child Protection Committees in various districts, and the setting up of rehabilitation centers for children withdrawn from the street. The Committee also notes with appreciation the fact that the State Party conducted study in 2006 on children on the street. However, the Committee notes that the number of children on the street is increasing. There are close to 1.3 million orphans and vulnerable children in the State Party who are the risk going on the street as such vulnerability along with poverty and abuse are factors that drive children to live on the street.

63. The Committee recommends that the State Party undertakes updated study on the number and situation of children on the street as the previous study is now outdated. The Committee encourages the State Party to provide preventive child care mechanism to cater for the needs of orphans and vulnerable children through social protection schemes and alternative care. The Committee further recommends that children already living on the street are not marginalized and receive basic services with no discrimination. The State Party in this regard is encouraged to strengthen the capacity of Child Protection Committees to enable them deliver services to children on the street. Moreover, the Committee recommends that rehabilitation and reintegration services are intensified and children on the street receive skills training to change their situation.

I. Responsibility of the child

64. The Committee notes with appreciation that the State Party promotes the responsibilities of the child towards the family, superiors, elders, the nation and the continent. The Committee recommends that the State Party educates children about their responsibilities along with their rights. The Committee recommends that children are also educated about the limits of their responsibilities so that a responsibility does not subject them to violation of their rights, in which case they are empowered to report such abuse. The State Party should also educate parents, communities, traditional and religious leaders that responsibilities of children should not hamper their right to participation, education, as well as freedom from abuse and child labour.

J. Conclusion

65. The African Committee of Experts on the Rights and Welfare of the Child appreciates the efforts of the Government of Zambia in the promotion and protection of the rights of children and aspires to the implementation of these recommendations. The Committee would like to indicate that it will undertake a follow up mission to ascertain the implementation of these recommendations in the foreseeable future. The Committee would also like to invite the State Party to submit its first periodic report by 2022 and to include in it information on the implementation of the present concluding observations. The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of the Republic of Zambia the assurances of its highest consideration.