



# International Covenant on Civil and Political Rights

Distr.: General  
20 January 2021

Original: English  
English, French and Spanish only

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## Human Rights Committee

### List of issues in relation to the fourth periodic report of Zambia\*

#### Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. In light of the information provided in the State party's periodic report (CCPR/C/ZMB/4, paras. 3–7), please update the Committee on any significant developments in the process of harmonizing domestic laws with the requirements of the Covenant, as recommended by the Committee in its previous concluding observations (CCPR/C/ZMB/CO/3, para. 9). Please include information on: (a) the extent to which provisions of the Covenant have been applied by domestic courts; (b) measures adopted to disseminate the Covenant among judges, lawyers, parliamentarians, prosecutors and other government officials; and (c) the status of the harmonization of all sources of law in the country in line with the provisions of the Covenant.

2. In light of the Committee's previous recommendations (paras. 13–14) and the State party's report (paras. 17–22), please provide information on the customary law system in force in the State party and on its interaction with statutory law. Please provide updated information on the research carried out by the Zambia Law Development Commission and indicate whether the State party intends to review additional laws to eliminate incompatibilities between customary law and the Covenant provisions, ensuring that the latter take precedence. Please provide information on measures taken to raise awareness of the precedence of statutory law over customary laws and practices and on the availability of effective remedies before statutory courts.

3. In view of the Committee's previous concluding observations (para. 10) and the State party's periodic report (paras. 8–11), please report whether the current budget and human resources of the Zambian Human Rights Commission are sufficient to enable it to effectively fulfil its mandate. Considering the requirement that the Commission should receive express approval from the President to be able to receive financial support from international institutions, please explain how the State party ensures the Commission's financial independence. Please also provide updated information on the complaints received by the Commission and the number of complaints relating to the provisions of the Covenant.

#### Anti-corruption measures (arts. 2 and 25)

4. Please provide information on measures taken to prevent and combat corruption. Please provide information on the results achieved by the use of such measures and data on any corruption-related prosecutions and convictions. Please respond to reports of widespread corruption in, among others, the judiciary and in the law enforcement, health and education sectors, which could undermine individuals' access to public services and enjoyment of their rights.

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\* Adopted by the Committee at its 130th session (12 October–6 November 2020).



**States of emergency (arts. 2, 4, 6–7, 9 and 19)**

5. In light of the Committee's previous concluding observations (para. 15) and the State party's periodic report (paras. 23–25), please provide updated information on measures taken to review article 25 of the Constitution to bring it into line with article 4 of the Covenant, including regarding the requirement to inform other States parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of the rights it has derogated from in time of public emergency. Please also indicate the instances in which states of emergency have been declared since the adoption of the Committee's previous concluding observations in 2007 and the measures taken to ensure that government authorities, including the defence and security forces, do not commit rights violations during a state of emergency. Please explain whether any constitutional or other legal provisions pertinent to states of emergency have been applied in response to the coronavirus disease (COVID-19) pandemic, including whether there have been derogations from any rights under the Covenant.

**Non-discrimination (arts. 2–3 and 26)**

6. In light of the Committee's previous recommendations (para. 12) and the State party's report (paras. 15–16), please provide updated information on the measures taken to review article 23 of the Constitution related to protection from discrimination to bring it into line with articles 2, 3 and 26 of the Covenant. In particular, please provide information on the application of the provisions contained in article 23 (4) (c), which exclude adoption, marriage, divorce, burial, devolution of property on death and other matters of personal law from the protection from discrimination afforded to women. Please provide information on measures taken to repeal those provisions. Noting that the constitutional referendum conducted in 2016 to amend the State party's Bill of Rights was unsuccessful, please provide information on measures envisaged in this regard. Furthermore, please provide information on bringing the provisions of the Constitution that address the rights of persons of "unsound mind" into conformity with the Covenant.

7. Please respond to reports of discrimination resulting from the dual land tenure system in the State party, which leads to landholders on State land enjoying the full protection of the law in relation to their property, while those under customary tenure are considered to be occupants and users, without the same protection. Considering that 85 to 90 per cent of land is currently under customary tenure, please provide information on measures taken to address that discrimination.

8. In light of the Committee's previous concluding observations (para. 24), please provide information on whether the State party intends to repeal the criminalization of consensual same-sex relationships between adults to ensure compliance with its obligations under articles 2, 17 and 26 of the Covenant. Please provide information on the number of people who have been arrested, detained and prosecuted for same-sex sexual relations in the past five years. Please respond to reports of discrimination, stigmatization, harassment and violence, including while in police custody, on the basis of sexual orientation or gender identity, and provide information on the measures taken to prevent and combat such acts.

**Gender equality (arts. 3 and 26)**

9. Please provide information on the implementation of the revised National Gender Policy (2014) and the Gender Equity and Equality Act (2015) and comment on information received about the lack of adequate resources directed to their implementation. Please also provide information on the establishment of the Gender Equity and Equality Commission, which would ensure oversight of gender mainstreaming efforts in the public and private sectors and in civil society. Please comment on the provision contained in the Minimum Wages and Conditions of Employment (Amendment) Act according to which domestic workers receive half pay during maternity leave and explain how the provision is compatible with the Covenant. Please also comment on information received that, according to the customary practices of some communities, men have greater authority over land and women face obstacles in securing alternative land when they face displacement. Please also comment on the constitutional requirement that all candidates for public office have a high school education and the disproportionate effect this has on the ability of women to run for office.

**Violence against women, including domestic violence (arts. 2–3, 6–7, 24 and 26)**

10. In light of the Committee's previous recommendations (para. 19) and the State party's report (paras. 46–49), please provide information on the measures taken to combat violence against women, including the implementation of the Anti-Gender-Based Violence Act (2011). Please also provide information on the implementation, in the context of the COVID-19 pandemic, of the measures taken to combat violence against women, including sexual violence and domestic violence. Please provide information on: (a) the number of investigations conducted, prosecutions brought and convictions handed down under the Anti-Gender-Based Violence Act in the past five years, including against law enforcement officials; (b) the fast-track courts established to deal with cases of gender-based violence and whether they are able to cover the demand in the entire territory, including rural and remote areas; (c) the one-stop centres and whether they are provided with the necessary resources to perform their functions; (d) the number and location of functioning shelters and support centres for victims of domestic violence; (e) the effectiveness of the law enforcement response to violence against women, including sexual violence and domestic violence; (f) progress made in combating violence against young girls in the school environment; and (g) efforts to combat transactional sexual exploitation of young girls.

**Death penalty (art. 6)**

11. In light of the Committee's previous concluding observations (para. 17) and the State party's periodic report (paras. 29–36), please provide information on the obstacles preventing the State party from abolishing the death penalty and from ratifying the Second Optional Protocol to the Covenant. Please comment on the reported increase in the number of death sentences pronounced in 2019. Please also comment on measures taken to prevent wrongful imposition of the death penalty and the remedies available to those who are exonerated.

**Termination of pregnancy and sexual and reproductive rights (arts. 6 and 17)**

12. In view of the Committee's previous concluding observations (para. 18) and the State party's periodic report (paras. 37–45), please provide updated information on measures taken to review the current legislation on abortion, particularly with respect to the requirement that three physicians must consent to an abortion. Please also state whether the current legislation ensures access to safe and legal abortion when carrying a pregnancy to term would cause the woman substantial suffering, particularly if the pregnancy is the result of rape or incest or is not viable. Please indicate the estimated number of clandestine abortions per year and state whether any women or medical personnel have been convicted of intentionally terminating a pregnancy and the penalties imposed. Please provide information on the measures taken to combat maternal mortality and the steps taken to ensure access to safe contraceptive methods and to education and information on sexual and reproductive health throughout the country.

**Right to life and excessive use of force (arts. 3 and 6–7)**

13. Please provide information regarding the legal standard applied in the State party for appropriate use of force and firearms by law enforcement officials and the source of that standard in domestic law. Please explain how the provision in the 1930 Penal Code Act allowing police officers to use deadly force with impunity to disperse an assembly (chap. IV, sect. 18) is in line with the Covenant, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020).

14. Please respond to allegations that, despite the existence of domestic legislation protecting the right to life, a number of unlawful and arbitrary killings committed by members of the security forces remain unpunished, including reported killings of opposition party members, such as that of a participant in a political assembly of an opposition party in the 2016 election campaign, and another of a student from the University of Zambia, Vespers Shimuzhila, on 5 October 2018. Please provide information on investigations conducted and sanctions imposed on those responsible. Please also provide, for the period covering the past five years, the number of complaints filed, investigations and prosecutions undertaken, and convictions handed down for unlawful or arbitrary executions.

**Prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (arts. 7 and 10)**

15. In view of the Committee's previous concluding observations (para. 21) and the State party's periodic report (paras. 57–63), please provide updated information on the anti-torture bill and any legislative framework to prohibit, prevent and combat torture, including information on the definition of torture, the penalties stipulated in criminal legislation and the inadmissibility of confessions obtained by torture. Please indicate whether the current legislation provides for a definition of torture which covers acts of torture committed by all persons acting in their official capacity, outside their official capacity or in a private capacity, when the acts of torture are committed at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. Please provide further information on the Police Public Complaints Authority established under Act No. 18 of 2016, which provides for a mechanism whereby the investigation of complaints against police actions can be initiated. Please also provide data on the number of investigations, prosecutions, convictions or acquittals and punishments recorded in the past five years, as well as the nature of the sanctions imposed for the act of torture.

16. In view of the Committee's previous concluding observations (para. 23) and the State party's report (paras. 72–81), please provide additional information on measures taken to reduce overcrowding in prisons, and their effectiveness to date, including alternatives to detention, the use of bond and bail provisions and the release of prisoners. Please also provide information on measures taken in detention centres, including detention centres for migrants and asylum seekers, to improve sanitary conditions. Please comment on information received that prison conditions in the State party continue to be below the minimum standard, with overcrowding, poor ventilation, disease, poor hygiene and limited access to adequate health care, especially for female prisoners. Please provide information on the measures taken to separate juveniles from adults in all prison facilities countrywide and to ensure that female prisoners are guarded by female officials. Please also provide information on violence against prisoners and the mechanisms in place for prisoners to complain against such violence.

17. Please describe the measures taken to improve the conditions under which people on death row are kept. In this regard, please provide information on measures taken to reduce overcrowding for people under sentence of death, to prevent physical abuse by guards and to ensure that they have access to clean water and adequate medical care, bedding, food and sanitation.

**Freedom of movement (art. 12)**

18. Please respond to allegations that opposition leaders have been denied access to some parts of the country, in some instances by police officers and ruling party cadres. Please indicate the measures taken to ensure that such restrictions to freedom of movement are not arbitrary, and are based on laws and applied only when strictly necessary.

**Administration of justice (art. 14)**

19. Please elaborate on the legislative framework ensuring the independence, impartiality and transparency of the judiciary and effective access to the judicial system. Please provide information on specific legislative measures taken to establish the separation of powers between the legislature, the executive branch and the judiciary, including by ensuring that the appointment and removal of judges is in line with the Basic Principles on the Independence of the Judiciary.

20. Please respond to reports of excessive and extended use of pretrial detention in the State party and report on any measures taken to reduce the use of pretrial detention and adopt non-custodial alternatives, such as bail, including in the case of adolescents in conflict with the law. Please also provide information on the steps taken to ensure access to the courts for persons who cannot afford legal counsel or court fees and provide details on the number and types of cases in which legal aid has been sought, granted and denied in recent years.

**Right to privacy (art. 17)**

21. Please respond to reports of routine police interference with the home and house searches conducted without a warrant, despite the legal requirement that such documentation be provided. Please provide information on any measures taken to prevent such incidents and ensure that security forces do not arbitrarily or unlawfully interfere with persons' privacy, family, home or correspondence.

**Elimination of slavery, servitude and trafficking in persons (arts. 2, 6–8, 24 and 26)**

22. In light of the information provided by the State party in its report (paras. 119–126), please provide information on the implementation of the Anti-Human Trafficking Act (2008) and respond to reports that trafficking in persons persists, particularly for the purposes of labour exploitation and domestic servitude. Please report on measures taken to: (a) improve the identification of victims or potential victims among groups in situations of vulnerability, including women and children from rural areas, migrants in transit and asylum seekers; (b) ensure effective prosecutions and convictions for trafficking and provide relevant data; (c) establish an efficient system of assistance and support for victims, including specialized and adequately funded shelters for victims of trafficking, operating on a permanent basis; and (d) facilitate victims' access to adequate compensation.

**Treatment of aliens, including migrants, refugees and asylum seekers (arts. 7 and 13)**

23. Please report on the protection in place for non-citizens in the State party, including refugees, asylum seekers and migrants. Please include information about: (a) the implementation of the Refugees Act of 2017 and whether it provides for refugee status determination, including in cases of unaccompanied and separated children; (b) the measures taken to provide effective access to asylum procedures for all who intend to seek asylum in the State party; and (c) the guarantees in place to ensure that asylum applications are assessed within a reasonable time frame, on an individual basis and with full respect for due process. Please also comment on information received that an estimated 10,000 recognized refugees lived in urban areas without the required residence permit or access to services.

**Freedom of religion (art. 18)**

24. Please comment on information received that religious leaders are pressured by political representatives and clergy members to maintain a positive discourse about the Government. Please also comment on information received that individuals may be denied career opportunities and services at public and private institutions if they wear particular religious clothing, such as the hijab.

**Freedom of expression, peaceful assembly and association, and protection of journalists and human rights defenders (arts. 6–7, 9, 19, 21–22 and 25)**

25. In light of the Committee's previous concluding observations (para. 25), please report on efforts by the State party to fully uphold freedom of expression, especially for those critical of the Government and those with unpopular views, such as sexual minorities. Please provide information on measures taken to ensure that journalists and human rights defenders are effectively able to carry out their profession without constraints and provide information on measures taken to ensure that all rights violations perpetrated against journalists and human rights defenders are thoroughly investigated and those responsible are brought to justice. Please also respond to reports indicating that: opposition political parties have been denied access to public media; some private radio stations have reportedly been forced to abandon broadcasting programmes featuring opposition political leaders or suffered damage due to assault while broadcasting such programmes, and broadcasting licences of some television and radio stations have been suspended on occasion without the established procedures for licence suspension being followed.

26. Please provide information on the application of sections 67 and 69 of the Penal Code Act, which criminalize defamation of the President and the publication of false news, and indicate whether the State party intends to repeal those provisions. Please respond to

allegations that the authorities have increased the use of criminal defamation laws to silence critics of the President or the judiciary.

27. Please provide information on the legal framework regulating freedom of assembly, and on measures taken to protect participants in assemblies from violence. In this regard, please clarify the requirement to give the authorities prior notice of all demonstrations and respond to allegations that the authorities often assert that such events do not have permission to proceed or cancel them at the last minute. Please also comment on information received that peaceful protests against the Government and political meetings organized by the opposition are frequently restricted under the Public Order Act and that, in many cases, the suppression of assemblies has resulted in arbitrary arrests, damage to property, physical injuries and, at times, deaths.

**Rights of the child (arts. 23–24 and 26)**

28. In view of the Committee’s previous concluding observations (para. 22) and the State party’s report (paras. 64–71), please indicate the measures taken, including the legal framework, to prohibit the use of corporal punishment against children in all situations. In light of the Committee’s previous concluding observations (para. 26), please provide information on measures taken to raise the minimum age of criminal responsibility and clarify how section 14 of the Penal Code Act has been applied. Please provide information on the adoption and implementation of the Marriage Bill (2015), addressing child marriage. Please also provide information on measures taken to protect children’s health and lives from lead poisoning, which particularly affects children living near former industrial lead mines and has reportedly led to death in some cases. Please also provide information on efforts to prevent and to address child labour and exploitation, especially in mining, agriculture and domestic service.

**Participation in public affairs (arts. 7, 14 and 25–26)**

29. Please indicate the measures taken to guarantee free and transparent elections. Please respond to reports about high levels of political violence perpetrated against opposition leaders, their supporters and those perceived to hold views contrary to those of the Government. Please provide information on the measures taken to investigate such offences and prosecute and punish the perpetrators, and to prevent similar incidents occurring during the upcoming election. Please provide information on the measures taken or envisaged towards implementation of the Constitutional Court’s judgment in the case of *Godfrey Malembeka v. Attorney General and Electoral Commission of Zambia*, and to provide a legal framework and an effective process to guarantee that persons deprived of their liberty can exercise their right to vote.

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