

# SOUTHERN AFRICA LITIGATION CENTRE

## List of Issues Prior Reporting on the ICCPR for Zambia at the 130<sup>th</sup> session of the Human Rights Committee, October 2020

Contribution by:  
Southern Africa Litigation Centre  
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**Contact Information:**  
Southern Africa Litigation Centre  
PO Box 52250 Saxonwold 2132 South Africa  
T: +27 (0) 10 596 8538  
E: [amandas@salc.org.za](mailto:amandas@salc.org.za)  
NPO 138-655  
[www.southernafricalitigationcentre.org](http://www.southernafricalitigationcentre.org)

### **Introduction**

The Southern Africa Litigation Centre (SALC) is a regional non-governmental organisation which was established in 2009. SALC promotes and advances human rights and the rule of law in Southern Africa, primarily through strategic litigation support.

SALC provides the following information to the United Nations (UN) Human Rights Committee ahead of the adoption of the list of issues for the fourth periodic report of Zambia ahead of its 130<sup>th</sup> session, in October 2020.

Zambia is a party to the International Covenant on Civil and Political Rights (ICCPR) which it acceded to on 13 May 1991. Zambia submitted its 4<sup>th</sup> periodic report in January 2020.

In this document, SALC sets out its concerns about the implementation of the ICCPR by Zambia focusing on conditions of equality, detention, arbitrary arrest, freedom of expression and freedom of assembly and association. The issues raised by SALC should not be seen as an exhaustive account of concerns in relation to Zambia's implementation of the ICCPR.

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## Article 3: Equal Rights of Men and Women

Gender discrimination is prevalent in Zambia. It limits women's opportunities to have access to land, education, credit and other productive assets, and creates a power imbalance that prevents women and girls from taking full control of their lives.<sup>1</sup> In her Report, the Special Rapporteur on the Right to Food, on her mission to Zambia, stated that the customary practices of some communities give men greater authority over land, and women have little say about securing alternative land when they face displacement.<sup>2</sup> Currently, between 85 and 90 percent of land is under customary tenure,<sup>3</sup> with the remainder constituting State land. According to the 1995 Lands Act, all land in Zambia is administered and controlled by the President, or by traditional chiefs, for the direct or indirect use or common benefit of all people.<sup>4</sup> In her report, the Special Rapporteur recommended that the laws relating to marriage and inheritance be amended, given that these are the main ways by which women should have access to land. Even though the Intestate Succession Act (1989) prohibits the eviction of a surviving spouse from a matrimonial home and protects a woman's access to inheritance, this is not always what happens.<sup>5</sup> The Special Rapporteur also recommended that the Government formulate a policy to encourage the joint registration of property, which would help to address the issue of unequal succession. Ultimately, the Government of Zambia needs to adopt a gender-sensitive, inclusive national land policy based on human rights principles, and establish an effective monitoring mechanism.

The system in Zambia has created a situation where landholders on State land enjoy the full protection of their property rights, while those under customary tenure are considered to be occupants and users, without the same protection.<sup>6</sup> This was seen in the recent case of *Molosoni Chipabwamba and 12 Others v Yssel Enterprises Limited and 7 Others*,<sup>7</sup> where several generations of a community had lived on customary land along the Mulembo River in the Serenje District in Senior Chief Muchinda's area. In 1996, the Works, Development and Social Services Committee and Serenje District Council approved an application for a commercial farm in Luombwa Farm Block without obtaining authorisation from the chief, eventually resulting in the community's forceful eviction and destruction of their homes, crops, and fruit trees. On 30 April 2020, the Zambian High Court held that the disputed land had been illegally converted from customary land to State land because the community had not been consulted and the chief's consent not obtained. Further, the Court found that the community's forced displacement violated their constitutional rights to life, freedom of movement and association, dignity, and equal protection of the law.<sup>8</sup> However, the Court held that it would not be in the public interest to cancel the Certificate of Title issued to the new owners because they had settled on the disputed land as commercial farmers most likely in furtherance of the government policy to create farm blocks which are beneficial for national development. The Zambian government has promoted farm blocks and agricultural development at the cost communities who have lived and farmed for generations on land now allocated to commercial farms. Throughout Zambia we have witnessed

<sup>1</sup> <https://digitallibrary.un.org/record/3805003?ln=en>

<sup>2</sup> <https://digitallibrary.un.org/record/3805003?ln=en>

<sup>3</sup> <https://www.tandfonline.com/doi/full/10.1080/03057070.2018.1461490>

<sup>4</sup> <http://www.parliament.gov.zm/sites/default/files/documents/acts/Lands%20Act.pdf>

<sup>5</sup> <https://digitallibrary.un.org/record/3805003?ln=en>

<sup>6</sup> <https://digitallibrary.un.org/record/3805003?ln=en>

<sup>7</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2020/05/Case-summary.pdf>

<sup>8</sup> <https://www.southernafricalitigationcentre.org/2020/07/07/a-new-dawn-for-the-protection-of-the-rights-of-vulnerable-communities-with-unregistered-land-in-zambia/>

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communities being evicted or losing large tracts of their customary land to these developments, without consultation or compensation.<sup>9</sup>

## **Article 10: Conditions of Detention**

During the previous reporting cycle, the Committee requested that the State “indicates what action has been taken by the National Committee on Penal Reform to improve poor conditions in places of detention in the State party and to ensure the implementation of article 10 of the Covenant as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners”.<sup>10</sup> The State replied acknowledging “the need to improve the poor conditions in places of detention by, among other means, reducing overcrowding, improving sanitation and access to clean water, food, clothing and medical care. The average population in prison stands at 14500 inmates. Presently the rate of overcrowding is 163%.”<sup>11</sup> More than a decade later, the occupancy level (based on official capacity) was estimated at 303% (May 2017) with the prison population having increased to 22 823 at December 2019 (Ministry of Home Affairs).<sup>12</sup> Prison conditions in Zambia continue to be below the minimum standard with overcrowding, poor ventilation, disease, poor hygiene, and limited access to adequate health care being some of the major concerns.

On 9 December 2019, the Supreme Court of Zambia handed down an important judgment on prisoners’ rights. The case was brought by two prisoners with HIV on antiretroviral treatment, who sought access to a balanced diet and improved prison conditions. Mambilima CJ, Malila and Kajimanga JJS, in the case of *Mwanza and Another v Attorney General*,<sup>13</sup> ordered the State to take immediate measures to decongest the Lusaka Central Correctional facility and increase the allocation of resources to the prison to improve the nutrition of prisoners. The Supreme Court held that the right to life must be interpreted liberally and in accordance with human dignity. The Court found that the State had failed in its duties as prescribed by the common law and Prisons Act and Rules, by not providing a balanced meal for prisoners, and that overcrowding, poor ventilation, disease, poor hygiene, and limited access to adequate health care, further posed a threat to their right to life. The Court held that the conditions under which prisoners were held at Lusaka Central Correctional facility constituted inhuman and degrading treatment or punishment. The Supreme Court ordered the State to report on the measures taken at the opening of each new court session.

## **Articles 9 & 19: Arbitrary Arrest and Freedom of Expression**

During the previous reporting cycle, the Committee requested that the State “provide information on the measures taken by the State party to implement its previous concluding observations, paragraph 14, relating to the case of three journalists who were found to be in ‘gross contempt of the National Assembly’” without any of the procedural guarantees of fair trial provided for by

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<sup>9</sup> <https://www.hrw.org/report/2017/10/25/forced-leave/commercial-farming-and-displacement-zambia>

<sup>10</sup> List of Issues to be Taken up in Connection with the Consideration of the Third Periodic Report of Zambia (CCPR/C/ZMB/3), [http://ccprcentre.org/doc/2012/06/CCPRCZMBQ3\\_E.pdf](http://ccprcentre.org/doc/2012/06/CCPRCZMBQ3_E.pdf)

<sup>11</sup> Zambia’s Responses to the List of Issues from the Human Rights Committee Relating to the Periodic Report on the International Covenant on Civil and Political Rights – Zambia, [https://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/zambia\\_replies90.pdf](https://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/zambia_replies90.pdf)

<sup>12</sup> <https://www.prisonstudies.org/country/zambia>

<sup>13</sup> <https://zambialii.org/zm/judgment/2019//selected-judgment-no33-2016-appeal-no-153-2016-george-peter-mwanza-melvin-beene-vs-attorney-general.pdf>

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articles 9 and 14 of the Covenant. And what measures has the State party taken to prevent recurrence of such violations?”<sup>14</sup> Since then, civil society has seen an escalation in the number of arrests of journalists, human rights defenders and opposition leaders in Zambia simply for calling for increased transparency and accountability by the President and the State. There have also been several arrests for the crime of defaming the President. We are particularly concerned by the persecution and harassment of human rights defenders by the police which appears to have become systemic.<sup>15</sup> Suppression of dissent is not new in Zambia. Those who have spoken out against alleged corruption have been increasingly targeted by the authorities in recent years with trumped-up charges, including being put in jail to harass and intimidate them.<sup>16</sup> Below are examples of the violation of the rights to freedom of expression and liberty.

In July 2017, Zambia police arrested a student, Edward Makayi, for criticising the President on Facebook.<sup>17</sup>

On 29 September 2017, Laura Miti, Sean Tembo, Fumba Chama, Bornwell Mwewa, Lewis Mwape and Mika Mwambazi were arrested in terms of section 127 of the Penal Code which provides that: “Everyone who disobeys any order, warrant or command duly made, issued or given by any court, officer or person acting in any public capacity and duly authorised in that behalf, is guilty of a misdemeanour and is liable, unless any other penalty or mode of proceeding is expressly prescribed in respect of such disobedience, to imprisonment for two years.” The 6 activists had peacefully protested the acquisition of 42 fire trucks procured by the government at a cost of 42 million USD. The activists were amongst other Zambians who had gathered outside parliament during budget presentation to demand accountability on what they felt was misuse of public funds.<sup>18</sup> They were finally acquitted more than a year later.

In January 2018, the Mongu Magistrates Court convicted and sentenced a medical doctor, Dr Kwalela Kafunya, to seven years’ imprisonment for defamation of the President. He was only recently released.

In May 2018, Fresher Siwale was charged with the offence of defamation of the President after comments he made on Muvi TV, an offence for which he continues to stand trial.<sup>19</sup>

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<sup>14</sup> List of Issues to be Taken up in Connection with the Consideration of the Third Periodic Report of Zambia (CCPR/C/ZMB/3), [http://ccprcentre.org/doc/2012/06/CCPRCZMBQ3\\_E.pdf](http://ccprcentre.org/doc/2012/06/CCPRCZMBQ3_E.pdf)

<sup>15</sup> <https://www.southernafricalitigationcentre.org/2019/12/23/concern-as-zambia-police-detains-human-rights-defenders/>

<sup>16</sup> <https://www.amnesty.org/en/latest/news/2020/03/zambia-activists-in-court-on-escalating-crackdown-on-human-rights/>

<sup>17</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/12/Southern-Africa-HRD-Summit-Statement-and-Report-1.pdf>

<sup>18</sup> <https://www.southernafricalitigationcentre.org/2018/12/21/zambia-defending-human-rights-defenders-right-to-protest/>

<sup>19</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/12/Southern-Africa-HRD-Summit-Statement-and-Report-1.pdf>

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In October 2018, Dr Austin Mbozi, a lecturer from the University of Zambia was arrested and charged with defamation of the President after he wrote an opinion piece critical of the government.<sup>20</sup>

In March 2020, a 15-year-old boy was arrested for creating a Facebook page and publishing statements alleged to be defamatory of the president.<sup>21</sup>

On 13 March 2020, Acting Registrar sent notice to judges of the Supreme Court, Constitutional Court, Court of Appeal, High Court, Registrars and Magistrates announcing that John Sangwa had been banned from appearing before any court. The judiciary made a complaint to the Law Association of Zambia (LAZ) on the alleged professional misconduct of John Sangwa. The banning of Sangwa was because of Sangwa's criticism of the Constitutional Amendment Bill 10.<sup>22</sup>

On 22 June 2020, the Inspector General of Police Kakoma Kanganja threatened to deal with the youth protesters "accordingly" after denying them permission to hold a march in the country's capital Lusaka.<sup>23</sup> The youth activists had notified the police about their plan to hold the march. Police denied them a permit under the pretext of lacking capacity to police the march. The Home Affairs Minister, Stephen Kampyongo, also spoke out against anti-corruption protests. He warned the protesters to abandon their action or "risk being dealt with." A Member of Parliament, Tutwa Ngulube, from the governing Patriotic Front also urged the police to break the protesters' bones in a video that was circulated online.<sup>24</sup>

## **Articles 21 and 22: Freedom of Assembly and Association**

There have also been numerous instances in which the right to freedom of assembly has been infringed.

In January 2018, Zambia police arrested a UK lawyer who was consulting with a community affected by mining operations. He was eventually charged with breach of peace.<sup>25</sup>

On 21 October 2018, police arrested 5 pastors and 3 officials from the Centre for Trade Policy for organising an unlawful meeting to discuss the national budget.<sup>26</sup> Copperbelt Province Police Commissioner Charity Katanga said "police arrested pastors and CTPD officials who gathered to discuss the national budget because they digressed from the topic and started talking about

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<sup>20</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/12/Southern-Africa-HRD-Summit-Statement-and-Report-1.pdf>

<sup>21</sup> <https://www.news24.com/news24/africa/news/zambia-arrests-15-year-old-for-defaming-president-on-facebook-20200311>

<sup>22</sup> <https://www.southernafricalitigationcentre.org/2020/03/23/banning-of-zambian-lawyer-for-exercising-his-freedom-of-expression-must-be-lifted-immediately/>

<sup>23</sup> <https://www.mwebantu.com/2020/06/22/we-shall-deal-with-protestors-streaming-from-bush-warns-inspector-general-of-police-kakoma-kanganja/22605/>

<sup>24</sup> <https://web.facebook.com/watch/?v=818881705306168>

<sup>25</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/12/Southern-Africa-HRD-Summit-Statement-and-Report-1.pdf>

<sup>26</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/12/Southern-Africa-HRD-Summit-Statement-and-Report-1.pdf>

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politics, which incensed other discussants.” The 8 were initially charged with unlawful assembly but pleaded guilty to a lesser charge of breach of peace.<sup>27</sup>

On 27 September 2018, Maiko Zulu, was arrested under the Public Order Act after he held a lone protest outside the British High Commissioner’s Office calling for the mining company Vedanta to be delisted from the London Stock Exchange.<sup>28</sup>

On 5 October 2018, a student from the University of Zambia, Vespers Shimuzhila, suffocated to death from police teargas which was thrown into her room. Police claimed protesting students violated the Public Order Act, but Vespers was not even a participant in the protest.<sup>29</sup>

On 21 December 2019, musician and poet Fumba Chama, known as pilAto, was arrested by police following a peaceful meeting where he addressed scores of youths in a church in Livingstone’s Libuyu township. While the police initially allowed the meeting to continue, pilAto was subsequently arrested during the meeting and charged with unlawful assembly. Two fellow human rights defenders, Laura Miti and Bornwell Mwewa, were detained by the Livingstone police after they tried to negotiate Chama’s release. Laura Miti and Bornwell Mwewa were charged with allegedly assaulting a female and male police officer, respectively. The three activists were initially denied police bail, but were then released. Laura Miti and Bornwell Mwewa appeared in court on 20 July 2020 to testify in their defence. PilAto continues to travel to Livingstone to extend his bail, he is yet to be formally tried in a court of law.<sup>30</sup>

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<sup>27</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/12/Southern-Africa-HRD-Summit-Statement-and-Report-1.pdf>

<sup>28</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/12/Southern-Africa-HRD-Summit-Statement-and-Report-1.pdf>

<sup>29</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/12/Southern-Africa-HRD-Summit-Statement-and-Report-1.pdf>

<sup>30</sup> <https://www.southernafricalitigationcentre.org/2020/03/17/update-on-the-arrest-of-zambian-hrds-fumba-chama-aka-pilato-laura-miti-and-bornwell-mwewa/>