

Civil and political rights

# The role of parliamentarians in the implementation of recommendations of the UN Human Rights Mechanisms



Guide for the Parliamentarians of Zambia

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## I. Introduction

The **International Covenant on Civil and Political Rights** (ICCPR) is one of the main United Nations human rights treaties and is ratified by 173 states. The **Human Rights Committee** is the monitoring body established by the ICCPR and is made up of 18 independent experts. Under article 40 of the ICCPR, each State party to the ICCPR is required to submit regularly to the Human Rights Committee a report on the implementation of the Treaty. State reports are considered by the Committee in an interactive dialogue with state officials. At the end of this dialogue, the Human Rights Committee adopts **Concluding Observations** (recommendations) which specify the measures necessary for the full and full implementation of the ICCPR.

With regard to Zambia, its third periodic report on the implementation of the ICCPR was examined by the Human Rights Committee in July 2007. Following this session, the Committee issued Concluding Observations (CCPR/C/ZMB/CO/3) with 18 recommendations addressed to the State Party. Zambia's fourth List of Issues was adopted by the Committee in January 2021, and the review is scheduled for one of the Committee's next sessions.

In recent years, Zambia has also been reviewed by other UN mechanisms. It went through the second UPR cycle in November 2017, and many of the recommendations adopted during that review echo the concerns raised by the Committee. Similarly, the Committee on the Elimination of all forms of Racial Discrimination (CERD) reviewed Zambia in June 2019 for the fifth time and also adopted a series of recommendations for the State (CERD/C/ZMB/CO/17-19). Zambia was reviewed by the Committee on the Rights of the Child (CRC) in 2016, which resulted in another series of recommendations (CRC/C/ZMB/CO/2-4).

This document, produced by the Centre for Civil and Political Rights, focuses on the recommendations of the Human Rights Committee and the UPR, and aims precisely to promote the appropriation of said recommendations by Parliamentarians. The aim of this document is to serve as a tool for Parliamentarians to be able to identify the recommendations for which their role is ultimately necessary to guide their action. These recommendations are grouped together by theme, which allows for a more systematic approach to the concerns of the various committees, especially when these concerns overlap.

## II. The implementation of recommendations of the UN Human Rights Mechanisms : the role of parliamentarians

The United Nations mechanisms have made several recommendations to Zambia.

Parliamentarians who focus on human rights can play an essential role and achieve concrete results. More precisely, parliamentary action as a whole, whether through the drafting of various legal texts, the adoption of the budget and the control of the action of the executive, covers the scope of civil, political, economic, social and cultural rights and therefore has a direct impact on the enjoyment of these rights.

Thus, the role of parliamentarians can vary with regard to the realization of human rights. Four deserve our attention in this precise context:

- 1) Ratification of international human rights instruments  
Example: Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty<sup>1</sup>
- 2) Adoption of laws or legislative texts aimed at improving the human rights situation  
Example: Pass a law that clearly prohibits corporal punishment in all settings<sup>2</sup>
- 3) Monitoring of respect for human rights. This follow-up can be done through interpellations, written or oral questions addressed to ministers or other representatives of the executive, the creation of commissions or committees to investigate or establish facts.
- 4) Control of government measures aimed at implementing recommendations. This oversight can be carried out through the parliamentary commission on human rights and can help enforce recommendations from international human rights bodies.

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1 Recommendation of the Human Rights Committee

2 Recommendation of the Human Rights Committee

### III. List of the recommendations on civil and political rights made to Zambia requiring the implication of parliamentarians

#### National Human Rights Commission

Human Rights Committee

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The State party should make all possible efforts to increase the budgetary resources of the Zambian Human Rights Commission to permit it to discharge its functions effectively. It should ensure that the Commission is able to seek and receive funds from international institutions or any other source as it deems appropriate. The State party is encouraged to enhance the powers and the status of the Commission. It should ensure that the rules governing the Commission are in full compliance with the Principles relating to the Status of National Institutions (The Paris Principles, adopted by the General Assembly resolution 48/134 of 20 December 1993).

UPR

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Provide sufficient funding for the National Human Rights Institution, enabling them to carry out its task as Human Rights watchdog<sup>3</sup>

#### Constitutional reform

Human Rights Committee :

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The State party should review article 23 of the Constitution in order to bring it in line with articles 2, 3 and 26 of the Covenant.

The State party should bring article 25 of the Constitution in line with article 4 of the Covenant. It should also establish a mechanism by which it informs 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, as required by article 4 (3) of the Covenant.

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<sup>3</sup> Norway

## UPR

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Undertake efforts to ensure that the new draft constitution covers the equality of women condition<sup>4</sup>

Ensure that the provisions of CEDAW are reflected in the new draft constitution by, inter alia, retaining the removal of article 23<sup>5</sup>

Hold a transparent and inclusive Constitutional reform process and referendum by ensuring that consultative bodies, such as National and Sector Group Convention, are composed of a representative balance of civil society and government stakeholders<sup>6</sup>

Enshrine the principle of equality and non-discrimination in the Constitution without qualifications by avoiding any discriminatory clauses as the draft is finalized<sup>7</sup>

## Customary law

Human Rights Committee :

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The State party should increase its efforts to raise awareness of the precedence of statutory law over customary laws and practices, and of the right to appeal before statutory courts. It should make those involved in the administration of local justice aware of the rights contained in the Covenant and encourage them, in particular, to take into consideration the right of every person not to be discriminated against.

UPR :

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Adopt measures to guarantee that statutory law prevails in case of conflict with customary practices, especially in family relations, implement awareness campaigns to better inform persons regarding the rights enshrined in CEDAW, provide training for customary and traditional courts administrators regarding CEDAW as well as statutory law which promotes and guarantees the rights of women and girls, including with respect to marriage and family relations<sup>8</sup>

Remove from the final version of the new Constitution all references to traditions or customary law in the field of family and private law which may be conducive to violations of human rights<sup>9</sup>

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4 Chile

5 Finland

6 US

7 Ireland

8 Uruguay

9 Italy

## Right to life and the death penalty

Human Rights Committee :

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The State party should review its Penal Code to ensure that death penalty is imposed only for the most serious crimes, a category to which aggravated robbery with the use of firearm, for example, does not belong. It should ensure that public debate of the death penalty is conducted on the basis of a full presentation of all aspects of the matter, especially the importance of achieving progress in the enjoyment of the right to life and the desirability of eventual ratification of the Second Optional Protocol to the Covenant. It should also consider the commutation of the death sentences of all those currently on death row.

UPR :

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Abolish the death penalty in law and consider ratifying ICCPR-OP2<sup>10</sup>

Abolish the death penalty and accede to ICCPR-OP2<sup>11</sup>

Consider the possibility to establish a de jure moratorium with a view to abolishing the death penalty<sup>12</sup>

Consider revising its legislation with a view to eliminating the death penalty<sup>13</sup>

Legislate to remove the death penalty from its statute and commute to custodial sentences those death sentences that have already been handed down<sup>14</sup>

Restrict the application and to consider the possibility of abolition of the death penalty<sup>15</sup>

Abolish definitely the death penalty as a culmination to the de facto moratorium which has been in place since 1997<sup>16</sup>

Abolish the death penalty in the new Constitution and pending the abolition of the death penalty, establish an official moratorium on the use of the death penalty<sup>17</sup>

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10 France

11 Australia

12 Italy

13 Brazil

14 UK

15 Ukraine

16 Spain

17 Slovenia

Take steps to abolish the death penalty<sup>18</sup>

Abolish the death penalty<sup>19</sup>

Abolish the death penalty<sup>20</sup>

Abolish the death penalty<sup>21</sup>

## Right to life and abortion

Human Rights Committee :

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The State party is encouraged to increase its efforts in combating maternal mortality. It should amend its abortion laws to help women avoid unwanted pregnancies and not have to resort to illegal abortions that could put their lives at risk.

## Domestic violence

Human Rights Committee

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The State party is called upon to significantly strengthen its efforts to combat gender-based violence and to ensure that cases are dealt with in an appropriate and systematic manner. It is encouraged, in particular, to increase the training of the staff of Victim Support Unit offices and of the Police on violence against women, including sexual abuse and domestic violence. The State party should also adopt specific legislation criminalizing domestic violence, and adopt immediate and concrete measures to combat sexual violence against young girls in the school environment

UPR :

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Adopt concrete measures to address violence against women, including by criminalizing marital rape and increasing public awareness of the problem, with a particular focus on religious and community leaders<sup>22</sup>

Recognize marital rape as a criminal offence<sup>23</sup>

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18 New Zealand

19 Togo

20 Namibia

21 Burundi

22 Norway

23 Canada



Harmonize traditional and legal regulations regarding the protection of women as well as the elimination of all exceptions based in traditional practices, to the principle of non-discrimination of article 23 of the Constitution<sup>24</sup>

Strengthen its efforts to combat violence against women, including by enacting and implementing necessary legislation and measures to ensure proper investigation and prosecution of sexual violence, thereby promoting access to remedy for victims<sup>25</sup>

## Torture

Human Rights Committee :

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The State party should ensure that each case of torture or ill-treatment is seriously investigated, prosecuted and punished in an appropriate manner under its criminal legislation, and that adequate reparation, including compensation, is granted to the victims. In order to facilitate such policy, the State party should envisage criminalizing torture and cruel, inhuman and degrading treatment as such. The State party is also encouraged to significantly increase its efforts to ensure that police investigators are adequately trained in techniques of investigations and in human rights, and that they are provided with sufficient investigation equipment.

## Rights of children

Human Rights Committee :

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The State party should prohibit all forms of violence against children wherever it occurs, including corporal punishment in the schools, and undertake public information efforts with respect to appropriate protection of children from violence.

The State party should take immediate action to raise the minimum age of criminal responsibility to an acceptable level under international standards.

UPR:

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Establish a definition of the child in accordance with article 1 and other principles and provisions of CRC, increase the legal age of majority of criminal responsibility, review legislation in force and customary law which establish different minimum ages in different sectors and which may not be in accordance with the relevant provisions of CRC<sup>26</sup>

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24 Spain

25 Japan

26 Uruguay

Harmonize in the criminal code and in the consuetudinary law the definition of a minor with the Convention on the Rights of the Child (CRC)<sup>27</sup>

Adopt additional measures, including legislative, to eliminate the practice of child labour exploitation and the use of corporal punishment for children<sup>28</sup>

Prohibit corporal punishment of children in all settings<sup>29</sup>

Review its legislation to prohibit and sanction corporal punishments of children in all areas<sup>30</sup>

## Sexual orientation

Human Rights Committee :

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The State party should repeal the provisions of the Penal Code that criminalize same-sex sexual activities between consenting adults (arts. 17 and 26).

UPR :

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Review and repeal domestic law which criminalizes sexual orientation<sup>31</sup>

Repeal the law criminalizing same-sex relations among consenting adults<sup>32</sup>

Repeal laws that criminalize a person's sexuality<sup>33</sup>

Decriminalize same-sex relationships between consenting adults and strengthen efforts to address inequality and discrimination based on sexual orientation<sup>34</sup>

Eliminate criminalization of homosexual relations as well as the elimination of all discriminatory practice towards LGBT persons<sup>35</sup>

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27 Spain

28 Belarus

29 Slovenia

30 Mexico

31 Uruguay

32 France

33 Canada

34 Australia

35 Spain

## Terrorism

Human Rights Committee:

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The State party should ensure that the rights enunciated in the Covenant, and in particular its provisions governing limitations and derogations to these rights, are fully taken into consideration when adopting counterterrorism provisions and laws. It should also bear in mind the need to define acts of terrorism in a precise and narrow manner.

## Fundamental freedoms

Human Rights Committee:

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The State party should repeal the provisions of the Penal Code that criminalise defamation against the President as well as the publication of false news. It should find other means to ensure accountability of the press, so as to be in full compliance with the Covenant, in particular the right to freedom of expression.

UPR :

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Make the necessary legislative changes, including restricting the scope of the Public Order Act, to ensure the fullest possible freedoms of association and expression, and to ensure the police enforce these and other laws in a proportionate manner, including in Western Province<sup>36</sup>

Take the necessary steps to ensure that its legal system and policies are in full compliance with its international obligations in respect of freedom of expression and that the media and journalists are guaranteed the necessary freedoms to carry out their work independently and without fear of prosecution<sup>37</sup>

Repeal any law limiting the right to free expression in the media<sup>38</sup>

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36 UK

37 Ireland

38 Iraq

## Ratification international instruments and incorporation of international instruments into national law

UPR :

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Take the necessary measures to eliminate all discriminatory treatment towards persons with disabilities including the ratification of OP- CERD<sup>39</sup>

Incorporate CEDAW into the national legislation in order that its provisions could be invoked before the courts<sup>40</sup>

Complete the process of full alignment of its national legislation with all obligations under the Rome Statute of the International Criminal Court and accede to the Agreement on Privileges and Immunities of the Court<sup>41</sup>

Enact and amend legislation to ensure that the prohibition against discrimination is in line with CEDAW, especially with article 1 concerning direct and indirect discrimination in general, and article 16 relating to marriage and family relations<sup>42</sup>

Step up its efforts towards the full implementation of the Anti- Human Trafficking Act of 2008, and consider ratifying OP-CRC-AC and OP- CRC-SC<sup>43</sup>

Consider ratifying the remaining instruments in a progressive manner and have them effectively

incorporated in the national legislation for effective implementation<sup>44</sup>

Consider acceding to ICCPR-OP2<sup>45</sup>

Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families<sup>46</sup>

Consider ratifying OP-CEDAW<sup>47</sup>

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39 Argentina

40 Chile

41 Slovakia

42 Finland

43 Cyprus

44 Kenya

45 Italy

46 Indonesia

47 Brazil

Ratify the remaining international human rights instruments and implement them and follow up on them<sup>48</sup>

Ratify OP-CEDAW<sup>49</sup>

Ratify OP-CAT, ICCPR-OP2, the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (OP-CEDAW), the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CERD), OP-CRC-AC and OP-CRC-SC<sup>50</sup>

Consider an early ratification of the third Optional protocol to the Convention on the Rights of the Child on a communications procedure (OPIC)<sup>51</sup>

Ratify all main international human rights treaties, especially ICCPR-OP2, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), the Optional Protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflict (OP-CRC-AC) and on the sale of children, child prostitution and child pornography (OP-CRC-SC), and incorporate these treaties fully in the national legislation<sup>52</sup>

Consider the ratification of the following international instruments: the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2), the Optional Protocol to the Convention on Economic, Social and Cultural Rights, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women<sup>53</sup>

Maintain its positive efforts in the current process of reviewing its national laws with a view to bringing them in line with its international human rights obligations<sup>54</sup>

## Non-refoulement

UPR :

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Evaluate the possibility to incorporate the principle of non- refoulement into the refugees law<sup>55</sup>

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48 Benin

49 Togo

50 Spain

51 Slovakia

52 Slovenia

53 Rwanda

54 Egypt

55 Argentina



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