



# International Covenant on Civil and Political Rights

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## Human Rights Committee 137th session

### Summary record of the 3962nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 2 March 2023, at 3 p.m.

*Chair:* Ms. Abdo Rocholl

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*The meeting was called to order at 3.05 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Fourth periodic report of Zambia (CCPR/C/ZMB/4; CCPR/C/ZMB/Q/4; CCPR/C/ZMB/RQ/4)*

1. *At the invitation of the Chair, the delegation of Zambia joined the meeting.*
2. **Ms. Daka-Oteng** (Zambia), introducing her country's fourth periodic report (CCPR/C/ZMB/4), said that the Government had embarked on a constitutional review process to strengthen State institutions and ensure that they were sufficiently equipped to promote human rights and support victims of human rights violations. The review process had been undertaken in consultation with various stakeholders, including civil society organizations. The Human Rights Commission Act of 1996 was currently under review and a bill had been drafted to enhance the capacity of the Human Rights Commission to discharge its mandate. The bill would be submitted to Parliament once the relevant legislative drafting procedures had been completed.
3. On 23 December 2022, the Government had abolished the death penalty by passing the Penal Code (Amendment) Act, and on 8 February 2023 the President had commuted the sentences of all 390 inmates on death row to life imprisonment. Section 69 of the Penal Code, which had criminalized defamation of the President, had been repealed under the Act. A bill on public gatherings had been drafted to repeal and replace the Public Order Act and further safeguard freedom of assembly, association and expression. The bill had been submitted to the Ministry of Justice and was currently going through internal legislative processes. The Government was working with civil society activists and non-governmental organizations (NGOs) to frame its media development policy and draft a bill on access to information, which would help ensure the independence and freedom of journalists in the country.
4. Prison conditions had been improved, including through better sanitation, additional bedding and upgraded ventilation systems. Under the Zambia Correctional Service Act, the National Parole Board had been decentralized to increase its capacity to consider parole applications and thus help reduce prison overcrowding. Legal aid desks had been introduced in courts, police stations and prisons to ensure easy access to legal services and avoid prolonged preventive and pretrial detention.
5. The Office of the Commissioner for Refugees was developing the country's first national refugee policy to ensure respect for the human rights of refugees and other persons of concern to the Office of the United Nations High Commissioner for Refugees (UNHCR). The Office of the Commissioner for Refugees had also launched a project to modernize refugee settlements to improve the welfare and living conditions of refugees and their host communities. In order to compile more reliable and better-quality statistics on refugees and improve budget planning, a verification exercise was being conducted to identify refugees, former refugees and asylum-seekers in several settlements. The Government was developing a national action plan to end statelessness, which would be completed by 2024, and was working to ensure that all children born to refugee parents were issued with birth certificates.
6. The Anti-Human Trafficking Act had been amended to prohibit trafficking in children and introduce a means of certifying victims of trafficking in persons. A department had been set up to combat trafficking in persons, and members of the judiciary and the prosecution service had been incorporated into the Committee on Human Trafficking in view of their roles in addressing human trafficking.
7. **Ms. Bassim**, commending the Government for approving the mandate of the national mechanism for reporting and follow-up in August 2022, said that she wished to know what steps had been taken to formally constitute the mechanism so that it could begin functioning effectively. She wondered what provisions of the Covenant had been applied in the national courts and to what extent; what measures had been adopted by the State party to raise awareness of the Covenant among judges, lawyers, prosecutors, parliamentarians and other government officials; and what steps had been taken to follow up on the Committee's Views, especially with respect to communications No. 821/1998, *Chongwe v. Zambia*; No.

1520/2006, *Mwamba v. Zambia*; and No. 1859/2009, *Kamoyo v. Zambia*. She would appreciate an explanation of the process by which new laws were promulgated, or existing laws amended, to ensure consistency with the Covenant.

8. She would be interested to learn what the outcome had been of efforts by the Zambia Law Development Commission to ensure compatibility between customary and statutory law; how many laws had been enacted or amended to that end; what obstacles the Commission had encountered in the process; and what role community chiefs and opinion leaders had played in facilitating the Commission's work. She wondered whether the State party had taken any steps towards amending the Constitution to allow the introduction of legal and policy measures to discourage customary practices that were highly detrimental to women's rights.

9. With regard to the anti-corruption measures set out in paragraphs 11–14 of the State party's replies to the list of issues (CCPR/C/ZMB/RQ/4), she wished to know what lessons the Anti-Corruption Commission had learned from its efforts to enhance transparency and fight corruption in the health-care and education systems, the judiciary and the police; what measures had been adopted other than the creation of 140 integrity committees; how those committees fulfilled their monitoring and reporting mandate; how their members were appointed; and what obstacles they faced in discharging their mandate. How was the State party implementing the United Nations Convention against Corruption and what measures had it taken to cooperate at the regional and international levels in the fight against corruption?

10. **Mr. Yigezu** said that it was unclear from the State party's report how the increased budget for the Human Rights Commission had helped it effectively implement its mandate. He wished to know what steps the State party intended to take to further increase the budgetary resources of the Commission in the light of reports that the Commission continued to face serious challenges in opening offices in all provinces and recruiting the necessary staff. He wondered whether the requirement for presidential approval for the Commission to receive funding from non-governmental sources had been permanently repealed in order to give the Commission full financial autonomy and whether the State party had taken action to implement the recommendations of the Global Alliance of National Human Rights Institutions in order to strengthen the Commission's independence and effectiveness and thus make it fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It would be useful to have information, including statistical data where possible, about the investigations conducted into the complaints received by the Commission, as referred to in the State party's replies to the list of issues (CCPR/C/ZMB/RQ/4, para. 10), and about any remedies or compensation provided to victims over the previous three years.

11. He would welcome clarification as to whether the President had the power to derogate from certain provisions of the Bill of Rights during a "state of threatened public emergency" under article 31 of the Constitution and, if so, how that power differed from the powers of derogation during a state of public emergency under article 30 of the Constitution. He would appreciate an explanation of how the restrictions introduced during the state of threatened public emergency declared in the wake of a fire in July 2017 were consistent with the Constitution and article 4 of the Covenant and what steps the State party had taken to ensure that such restrictive measures met the requirements of necessity and proportionality under the Covenant. In view of the apparently excessive measures taken to contain the coronavirus disease (COVID-19) pandemic under the Public Health Act, including the indefinite closure of learning institutions and restrictions on public gatherings, he would like to invite the delegation to comment on those measures' compatibility with the Constitution and the necessity and proportionality requirements under the Covenant.

12. He wished to know whether the State party planned to become a party to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, and, if so, whether it had established a tentative timeline for doing so. He also wondered whether, to allay concerns that the death penalty might be reinstated in the future, the State party would amend article 12 (1) of the Constitution and repeal section 29 (1) of the Defence Act, both of which allowed for the death penalty. In the affirmative, what was the timeline for doing so?

13. **Ms. Kpatcha Tchamdja** said that she would welcome updated information on measures taken to review article 23 of the Constitution on protection from discrimination, in order to bring it into line with articles 2, 3 and 26 of the Covenant. In particular, it would be interesting to receive information on the application of article 23 (4) (c), which excluded issues of adoption, marriage, divorce, burial, devolution of property on death and other matters of personal law from the protection from discrimination afforded to women. Information on any measures taken to repeal those provisions would be appreciated. She also wished to know of any measures taken to address discrimination resulting from the dual land tenure system.

14. She would be grateful for updated information on measures taken to review the current legislation on abortion, particularly with respect to the requirements that three physicians must consent to an abortion and that the abortion must take place in a hospital, which were conditions particularly difficult to meet in rural areas. She would also like to know whether existing legislation ensured access to safe and legal abortion in cases of rape, in particular when the woman concerned was over 16 years of age, or incest. It would be useful to learn approximately how many clandestine abortions took place each year, whether any women or medical personnel had been convicted of intentionally terminating a pregnancy and, if so, what penalties had been imposed.

15. **Mr. Soh** said it was regrettable that no genuine efforts had been made by the State party to implement the Committee's previous concluding observations on the need to decriminalize consensual same-sex relations. The current criminal status of such relations in Zambia violated the rights to privacy and non-discrimination enshrined in the Covenant. Research indicated that more than half of lesbian, gay, bisexual, transgender and intersex persons in Zambia had faced physical violence in their lifetime. Of particular concern were reports that they were targeted in hate speech by high-level public officials and politicians. Had any concrete measures been taken by the State party to prevent and combat acts of harassment and violence against lesbian, gay, bisexual, transgender and intersex persons?

16. In September 2017, Japhet Chataba and Steven Sambo had been arrested for engaging in consensual same-sex sexual conduct and had been subjected to anal examinations at the request of law enforcement officials. He would like to know how such a procedure conformed to the State party's obligations under the Covenant. He would also appreciate clarification of reports that, in March 2021, a 17-year-old intersex individual who had applied for a job requiring a female employee had been made to undress in front of a hiring official in order to confirm their gender.

17. The Committee harboured concerns about the situation of gender equality and women's empowerment in the State party. He wished to know why the establishment of the Gender Equity and Equality Commission had stalled. It would also be interesting to know what concrete consequences had resulted from the abolition of the Ministry of Gender and the reassignment of its responsibilities to the Cabinet Office in September 2021. He would welcome information on any plans to speed up implementation of the Gender Equity and Equality Act (2015), and the corresponding timeline.

18. Women's rights to inherit land, as outlined in the Intestate Succession Act, did not apply to customary land. He would appreciate information regarding the obstacles faced by women in securing alternative land when they faced displacement, and information about the provisions in the Minimum Wages and Conditions of Employment (Domestic Workers) (Amendment) Order under which domestic workers received half pay during maternity leave.

19. Existing laws and practices discouraged women from pursuing public office, contributing to their low degree of political representation. He would like to know whether the State party was considering the adoption of temporary special measures, such as a statutory quota or a gender parity system for nominations to government bodies, with a view to increasing the representation of women in political and decision-making positions.

20. Measures put in place to curb violence against women had not yielded the intended results, and reported cases of violence against women had increased, particularly with the imposition of restrictions during the COVID-19 pandemic. He wished to know what additional measures had been taken during the pandemic to ensure that victims of gender-based violence had access to reporting and protection mechanisms. He would also appreciate

clarification of reports that some official education materials, such as those introduced under the comprehensive sexuality education framework, included inappropriate content instructing adolescents that they could prevent gender-based violence by “dressing appropriately” and assertively saying no to perpetrators.

21. **Mr. Quezada Cabrera** said that there were persistent allegations of disproportionate and unreasonable use of force and firearms by the authorities. He would like to know how the principles of necessity, proportionality and reasonableness were ensured in the use of force and firearms by police officers and whether there were corresponding guidelines or protocols in line with international standards.

22. He would welcome clarification of the apparent contradiction between allegations that the authorities had used lethal force to disperse assemblies and the State party’s assertions that Service Instruction No. 227 allowed only non-lethal force to be used in such circumstances. The Committee would also appreciate further information about that Service Instruction, including a copy of its provisions. It would be interesting to know whether there had been any criminal and administrative investigations into the disproportionate and unreasonable use of force or firearms to disperse assemblies and, if so, what the outcomes had been.

23. He would appreciate additional information on allegations of murders committed by members of the security forces against opposition party activists in the previous five years. It would be interesting to know the number of complaints filed, the results of the investigations and the sentences handed down. The State party had indicated that the murder of Vespers Shimuzhila had been investigated by a coroner, who had delivered an open verdict. He would welcome clarification with regard to the outcome of the investigation, the content of the verdict and the legal nature of the investigation. It would also be useful to know whether criminal proceedings had been brought against the alleged perpetrator or perpetrators and what the outcome had been.

24. The State party had indicated that evidence obtained under torture was not admissible in criminal proceedings. However, the legal basis of that assertion was unclear, given that no legislation against torture was in force. It would therefore be interesting to know of any specific cases in which the issue had been tested. It would also be useful to learn when the anti-torture bill would be adopted and whether it included a definition of torture in line with international standards. Lastly, the Committee would like to know the number of investigations, prosecutions and convictions for acts of torture under the Police Public Complaints Authority mechanism established pursuant to Act No. 18 of 2016.

*The meeting was suspended at 4.05 p.m. and resumed at 4.30 p.m.*

25. **Ms. Daka-Oteng** (Zambia) said that, with regard to the formal constitution of the national mechanism for implementation, reporting and follow-up, the names of the mechanism’s members had been conveyed to the Cabinet Office, whose decision was still pending. On the question of training for judicial officers, training on new laws was an ongoing activity that applied to all new legislation. The judiciary had a school intended for that purpose. Lastly, concerning communication No. 821/1998, *Chongwe v. Zambia*, the Government had begun to provide compensation to Mr. Chongwe in line with the recommendations received.

26. **A representative of Zambia** said that a 2017 research project had sought ways to bridge the gap between customary law and statutory law in respect of intestate succession issues. Upon conclusion, a draft report and a draft bill had been produced, although the bill would need to be updated prior to adoption. The Government intended to review article 23 of the Constitution within the next five years.

27. **A representative of Zambia** said that efforts to combat corruption included encouraging institutions to adopt electronic payment methods in order to reduce the number of cash transactions. The introduction of a national insurance system had similarly helped reduce corrupt practices in the health service. All payments to the judiciary were now paid into a specific bank account in order to prevent cash from changing hands between members of the public and judicial officers. The integrity committees established in those institutions were independent bodies to which staff members could report corrupt practices. They were

composed of employees at all hierarchical levels of the institution, apart from the chief executive officer and his or her deputy. If an integrity committee deemed a reported case to be purely disciplinary in nature, it referred the matter to the institution's disciplinary committee. However, where corruption was involved, the case was reported directly to the Anti-Corruption Commission for investigation and subsequent prosecution.

28. The main obstacle faced by the integrity committees was related to the fact that their members had to split their time between their usual jobs and their committee duties. The members were selected by the human resources department of the institution concerned and only those staff members who were considered to have the highest levels of integrity were appointed.

29. Her Government had entered into mutual legal assistance agreements with other States in an effort to combat corruption at the regional and international levels. Efforts were being made to incorporate regional agreements on corruption into Zambian law, and the United Nations Convention against Corruption and other relevant agreements had already been domesticated.

30. **A representative of Zambia** said that the Human Rights Commission was an independent body and that its funding from the Government had been increased steadily over the preceding five years, in line with the available resources.

31. **Ms. Daka-Oteng** (Zambia) said that the Ministry of Justice was currently examining draft legislation that would provide a legal basis for the standing approval given by the President for the Human Rights Commission to receive funding from non-governmental sources. That would enhance the Commission's independence and its compliance with the Paris Principles.

32. **A representative of Zambia** said that the restrictions on movement imposed during the COVID-19 pandemic were in compliance with article 22 of the Constitution, which provided that such restrictions could be imposed in the interests of public health. The number of complaints of violence against women had not increased during the reporting period. A toll-free hotline was available for members of the public who wished to report cases of domestic violence.

33. **A representative of Zambia** said that the COVID-19 pandemic had created an unprecedented situation. On the basis of information from medical professionals, the right to gather and the right to education had been restricted in order to protect the right to life. In that context, the restrictions had not been arbitrary, but necessary and prudent. Following developments such as the introduction of a vaccine against COVID-19, there were currently no lockdown measures in place.

34. **Ms. Daka-Oteng** (Zambia) said that the Zambian authorities had begun the process of ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. The President had commuted all death sentences to life in prison. The provision in the Defence Act, 1964 (No. 45 of 1964), on the use of the death penalty would be repealed. There were plans to hold a referendum on reviewing the Bill of Rights to remove the provisions on the death penalty within the coming five years. That referendum would also cover the review of article 23 of the Constitution.

35. **A representative of Zambia** said that measures had been taken to protect customary land tenure, including the adoption of the Lands Tribunal Act, 2010 (No. 39 of 2010), which had established a formal court for matters concerning land held under customary tenure. In a recent case, *Molosoni Chipabwamba et al. v. Yssel Enterprises Limited et al.*, the High Court had ordered the cancellation of a certificate of title for leasehold tenure because the interests of the people living on the land under customary tenure had not been taken into consideration before the title had been granted. As customary tenure could be converted to leasehold tenure with the consent of the local chief, the President had recently held meetings with tribal chiefs to inform them of the importance of considering the interests of the people who might be affected by the conversion of the land tenure before approving it.

36. **Ms. Daka-Oteng** (Zambia) said that same-sex relations were a violation of her country's morals, values and beliefs, as enshrined in the Constitution. The low rate of political participation among women was a real concern and efforts had been made to

improve the situation. A bill had been drafted on the matter several years previously, but it had not been adopted.

37. **A representative of Zambia** said that during the COVID-19 pandemic a hotline had been established for the reporting of gender-based violence.

38. **A representative of Zambia** said that the legislation in force and Service Instruction No. 227 provided clear guidelines on the use of force by law enforcement. Law enforcement officers who used excessive force were investigated; some had been prosecuted and subsequently convicted. Following the enactment of the Public Gatherings Bill 2022, Service Instruction No. 227 would be repealed. In the Vespers Shimuzhila case, the coroner had not been able to identify the cause of death. However, the family had received compensation from the State.

39. **A representative of Zambia** said that evidence obtained through torture was inadmissible in the courts. When a statement acknowledging guilt was made, a “trial within a trial” was held to enable the court to determine whether the confession had been obtained through torture; if so, it was not admissible in court. The 1999 case of Dave Kataba Wanjeke was an example of a case in which the High Court had endeavoured to take effective measures to protect accused persons against torture.

40. **Ms. Daka-Oteng** (Zambia) said that torture was prohibited under the Constitution and that a draft implementing act was under review by the Ministry of Justice.

41. **A representative of Zambia** said that efforts had been made to align the definition of torture in the draft implementing act with best practices from other jurisdictions and international treaties, including the Covenant.

42. **A representative of Zambia** said that before bills were submitted to the National Assembly, they underwent a multistage internal consultation process within the executive branch. Bills that passed those stages were approved for publication and introduced in the National Assembly, where they were considered in several more stages before becoming law.

43. In Zambia, domestic work was a fluid and developing sector that had not been specifically regulated until 2011. Ongoing efforts had since been made to expand the rights of domestic workers. Owing to the dynamics of the domestic work sector, it had been agreed that domestic workers should receive half pay during maternity leave. In 2019, Zambia had adopted a robust law, the Employment Code Act, 2019 (Act No. 3 of 2019), which had established an entitlement of 14 weeks of maternity leave for all women employees, with full pay for those who had been continuously employed by the same employer for at least two years. The Act took precedence over orders regulating specific sectors. However, in accordance with section 2 of the Act, the Minister of Labour and Social Security could exempt a specific sector from its provisions after consultation with the Tripartite Consultative Labour Council.

44. **A representative of Zambia** said that consultation was an essential part of the legislative process in Zambia. To avoid enacting a bill that would be impossible to implement, the institution that was proposing it would hold prior consultations with those that would be tasked with or were likely to be affected by its implementation. Even at the committee stage in the National Assembly, stakeholders could be summoned to provide their views on a bill. There had been cases in which bills had failed to become law because Parliament had deemed the consultation process to have been inadequate.

45. **A representative of Zambia** said that the use of weapons by correctional officers was governed by section 25 of the Zambia Correctional Service Act, 2021 (No. 37 of 2021). Correctional officers were required to use the minimum level of force necessary in the circumstances. Those who used excessive force resulting in injury or death were liable to criminal prosecution. In 2019, a correctional officer who had used excessive force resulting in the death of a prisoner had been convicted of manslaughter.

46. **Ms. Bassim** said that further information on the process by which members of the integrity committees were selected would be welcome. It was unclear what steps were taken to ensure that the members were persons of integrity, whether they were remunerated for

serving on the committees and what safeguards were in place to prevent the submission of malicious reports of corruption to the committees.

47. **Mr. Quezada Cabrera** said that he would be grateful for additional information on the activities of the Police Public Complaints Commission established under Act No. 18 of 2016. In particular, he wondered how many investigations had been carried out and prosecutions brought in response to the complaints received and what sentences had been imposed on those convicted.

48. **Mr. Soh** said that he would appreciate replies to his questions on the measures taken to combat harassment and violence against lesbian, gay, bisexual, transgender and intersex persons and on the delay in the establishment of the Gender Equity and Equality Commission. In addition, he wished to know why the number of reported cases of gender-based violence had increased so significantly between 2021 and 2022 and what measures had been and would be taken to prevent and address sexual violence against girls in particular.

49. **Ms. Kpatcha Tchamdja** said that she would be grateful for a detailed response to the concerns raised in paragraph 7 of the Committee's list of issues (CCPR/C/ZMB/Q/4).

50. **Mr. Yigezu** said that it would be useful to learn whether the standard operating procedures adopted during the COVID-19 pandemic to prevent overcrowding in prisons remained in force. Did non-custodial measures continue to be promoted?

51. **Mr. Helfer** said that, in the light of paragraph 43 of the Committee's general comment No. 36 (2018), he wondered what mechanisms, if any, were available to defendants who sought to have their convictions reviewed on the basis of newly discovered evidence of their innocence or evidence that a miscarriage of justice had taken place.

52. **Mr. Gómez Martínez** said that he wished to know whether the State party had carried out an analysis to determine the reasons for the rejection of the proposed amendments to the Bill of Rights in the 2016 constitutional referendum.

*The meeting was suspended at 5.40 p.m. and resumed at 5.45 p.m.*

53. **Ms. Daka-Oteng (Zambia)** said that the Government had indeed carried out an analysis of the reasons for the rejection of the proposed amendments to the Bill of Rights. The constitutional referendum had been held on the same day as the general elections, which had conflated human rights and political issues. The next referendum on the proposed amendments would be held well before the general elections and would be preceded by more intensive awareness-raising efforts.

54. Under the Constitution, all persons were equal before the law. As a result, no one could be discriminated against on the basis of his or her sexuality.

55. Although the Constitution provided for the establishment of the Gender Equity and Equality Commission, the previous Government had considered that other institutions, including the Ministry of Gender and the Human Rights Commission, were already performing similar functions. As the establishment of the Commission would generate considerable costs, it had been decided that the process should be postponed. The current Government was holding consultations to determine how best to proceed in the circumstances.

56. **A representative of Zambia** said that prospective members of the integrity committees underwent a rigorous vetting process, including background checks to rule out those who had behaved dishonestly in the past. The members of the committees did not receive any remuneration for their service. Reports of corruption received by the integrity committees were investigated before being referred to the appropriate department, which ensured that no action was taken in response to those that were malicious in nature. Where the issues raised in genuine reports did not amount to corruption, they could be dealt with through administrative channels.

57. **A representative of Zambia** said that the Police Public Complaints Commission was an oversight body provided for in the Constitution. The Commission, which was governed by Act No. 18 of 2016 and operated independently of the Zambia Police Service, was

mandated to investigate complaints against police officers and to formulate recommendations for further action, including criminal prosecution, where appropriate.

*The meeting rose at 5.55 p.m.*