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Summary record of the 3963rd meeting

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Chair: Ms. Abdo Rocholl

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The meeting was called to order at 10.05 a.m.

Election of the Chair and other officers of the Committee *(continued)*

1. **The Chair** said that Ms. Ahmadov and Ms. Kpatcha Tchamdja had been nominated to serve as Vice-Chair and Rapporteur of the Committee, respectively.
2. *Ms. Ahmadov was elected Vice-Chair by acclamation.*
3. *Ms. Kpatcha Tchamdja was elected Rapporteur by acclamation.*

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

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

4. *At the invitation of the Chair, the delegation of Zambia joined the meeting.*
5. **The Chair** invited the members of the delegation of Zambia to continue replying to the questions put by Committee members at the previous meeting.
6. **Ms. Daka-Oteng** (Zambia) said, with respect to sexual violence against girls, that the offence of defilement carried a mandatory minimum term of 15 years' imprisonment and a maximum term of life imprisonment. As part of its efforts to stem the rising number of cases of child defilement, the Government had put in place a number of measures. Firstly, it had launched a review of the Anti-Gender-Based Violence Act in 2018, with a view to developing an institutional framework and mechanisms for the enforcement and full operationalization of the Act. The report on the review would shortly be sent to the Gender Division in the Office of the President. A key recommendation in the report was to define criminal acts of gender-based violence as offences under the Penal Code, since the Act itself defined no such offences. The report also recommended the definition of offences relating to gender-based harassment and harmful traditional practices. As to sentencing, the report recommended that aggravated offences of gender-based violence and defilement should incur a heavier penalty.
7. Secondly, with a view to deterring would-be offenders, the authorities had decided to disqualify anyone convicted in such cases from consideration for early release from prison under the mercy, amnesty or parole mechanisms. Thirdly, the State was taking action on harmful customary practices in chiefdoms and villages by ensuring that customary practices were brought into line with minimum human rights standards and statutory law and amending local legislation or regulations that violated the dignity of the human person. Fourthly, the new Children's Code Act contained provisions to protect children against abuse of various kinds, including sexual exploitation, prostitution and deliberate exposure to pornographic material. The Act also mandated the ministry responsible for child welfare to draw up strategies for putting a stop to violence and abuse against children.
8. The Police Public Complaints Commission was established under the Constitution. Its mandate was to investigate police action, enquire into or audit any aspect of police action, and ensure transparency and accountability by police officers in the handling of criminal matters in accordance with the Constitution. It was required to submit its reports on investigations to the Zambia Police Service Commission for action as required, to the Director of Public Prosecutions where it found that an offence had been committed by a police officer, to the Inspector-General of Police for disciplinary or other administrative action against the officer concerned, or to any other relevant body or authority, as required. The statistical information requested by the Committee regarding investigations, prosecutions and convictions would be provided in writing.
9. Turning to cases of illegal abortion, she said that, in 1987, a girl had been sentenced to 18 months' imprisonment for performing an illegal abortion; in another case a medical doctor initially convicted of illegal abortion had been acquitted on appeal. The statistics requested would be provided in writing. The Penal Code had been amended in 2005 to give victims of rape or incest the right to abortion. As to the rules governing the approval of abortion, in 2017, the Ministry of Health had drawn up guidelines to ensure access to safe abortion services which, among other things, permitted qualified mid-level health

practitioners such as clinical officers and nurses to carry out safe abortions. As part of efforts to address population issues in the interests of people-centred development, the Termination of Pregnancy Act was to be amended in order to ease the legal requirements on access to abortion, particularly for women in rural areas.

10. With regard to the review of convictions in cases where new evidence came to light, under the Supreme Court of Zambia Act, the Supreme Court could, if it thought it necessary or expedient in the interests of justice, remit a case to a lower court with instructions to take further evidence as necessary. The Court's case law also held that, if new evidence came to light that could not have been secured earlier, an appeal might be permissible in accordance with the principles governing the taking of fresh evidence.

11. **Mr. Soh** said that he wished to commend the State party on the measures it had taken to improve conditions in places of detention. Nevertheless, he remained concerned at the numerous problems that persisted in prisons, such as overcrowding, disease outbreaks, poor sanitation and food and water shortages, as well as the failure to separate juveniles from adults. According to information received by the Committee, overcrowding was due to factors such as the slow pace of judicial procedures, limitations on the imposition of non-custodial sentences and the conditions surrounding the granting of bail. He would appreciate receiving further information on measures taken to improve the issuance of bail orders and to reduce delays in the justice system. He would also appreciate an update on the progress made with the building of separate child transit and reformatory centres.

12. Given that mental disabilities among prisoners appeared to be widespread and that the needs of those affected, and indeed the needs of persons with other disabilities, were not adequately provided for, he would like to hear about any measures envisaged to ensure that persons with disabilities received appropriate services and accommodations in detention.

13. Turning to police accountability for alleged human rights violations, he asked how many complaints had been filed with the Human Rights Commission and the Police Public Complaints Commission. He would also appreciate statistics on investigations, prosecutions and convictions in cases relating to police officers who had arbitrarily or unlawfully interfered with individuals' privacy, family, home or correspondence. In the light of concerns that had been raised about the scope of the Cyber Security and Cyber Crimes Act and about the procedure whereby it had been passed into law, he would be interested to know what measures had been taken or were envisaged to review the Act in order to bring it into line with article 17 of the Covenant.

14. With regard to the right to participate in public affairs, he took note of the State party's efforts to make electoral services more accessible to the people. The increased number of electoral wards and polling stations in the constituencies would require increased resources to ensure transparency and accountability. He would be interested to hear how the Electoral Commission operated at the regional and district levels in order to facilitate voter registration and voter education. What measures were in place or envisaged to enable non-State observers to monitor election processes?

15. He welcomed the landmark Constitutional Court judgment in the case of *Godfrey Malembeka v. Attorney General and Electoral Commission of Zambia*, upholding the right of prisoners to vote, and wished to know how the State party now planned to develop legal and policy frameworks to effectively guarantee that persons deprived of their liberty could exercise the right to vote, including the right to access information to enable them to make informed electoral decisions. What arrangements were in place to enable political parties to conduct campaigns directed towards persons being held in places of detention?

16. Lastly, he would like to hear more about the State party's plans for making electoral processes more inclusive, particularly with regard to the right of young people, women and persons with disabilities to vote and stand for election.

17. **Ms. Kpacha Tchamdja** said that the Committee congratulated the State party on its repeal of the death penalty and hoped that the measure could be extended to the death penalty for military personnel.

18. In view of information received alleging that prison guards had committed acts of torture against detainees, she would appreciate receiving statistics showing how the rules

governing the use of force against prisoners had been applied in the past five years. She would particularly like to know what sanctions had been imposed on prison guards found to have used physical violence on prisoners.

19. She took note of the State party's measures to protect journalists, human rights defenders and activists and the positive developments in relation to sexual minorities. She would appreciate a description of the measures taken to give full effect to the right to freedom of expression, particularly in respect of persons who criticized the Government or expressed non-majority views. She would like to hear about measures for allowing journalists and human rights defenders to freely practise their profession and for ensuring that, in the event of any violation of their rights, a thorough investigation was launched and the perpetrators brought to justice.

20. She asked the delegation to comment on claims to the effect that opposition political parties had been refused access to public media; that private radio stations had been prevented from broadcasting programmes featuring opposition leaders; that radio stations had been attacked; and that television and radio stations had had their licences arbitrarily suspended. She also requested clarification on the status of the still-pending bill on access to information and on how the State party guaranteed freedom of expression for human rights defenders and journalists, given that the bill reportedly did not contain such guarantees. The Committee had also received worrying information regarding the impartiality of the Independent Broadcasting Authority. She would welcome the delegation's response to allegations that the Authority had given preferential treatment to a foreign company over local television companies and that it had been known to silence private stations in the past. What measures had been taken to guarantee the Authority's independence?

21. **Ms. Bassim**, noting reports that opposition leaders had been denied access to some parts of the country, said that it would be helpful to hear an update on the ongoing review of the Public Order Act and on the measures being taken to ensure that any restrictions on freedom of movement were not arbitrary and were introduced in accordance with the law and only when strictly necessary.

22. She wished to know what specific measures had been taken to promote freedom of religion and respect for religious diversity, in accordance with article 18 of the Covenant; what role the media, religious leaders and influencers could play in that respect; and what was being done to enforce anti-hate speech legislation and punish perpetrators. It would also be interesting to hear the delegation's thoughts on allegations that individuals had been denied access to public and private health services for wearing religious clothing.

23. She invited the delegation to comment on whether the corporal punishment of minors would be prohibited in all settings, to specify the minimum age of criminal responsibility and to explain why the age had not yet been raised to 14 years, in line with the commitment made by the State party during the third cycle of the universal periodic review in 2017. She would welcome statistics on violations of the Marriage Act, pursuant to which the marriageable age was 21 years, and on the number of customary or religious marriages between children. Moreover, she wondered what measures the State party took to protect the health of children and their families living in mining areas, for example by ensuring adequate nutrition, preventing lead poisoning, monitoring symptoms of poisoning and, if necessary, administering urgent treatment.

24. **Mr. Quezada Cabrera** said that he would like to know how the State party ensured that the President's involvement in the appointment of judges did not violate the constitutional principle of separation of powers, how candidates were selected, whether it was possible to appeal against appointment and removal decisions and have them independently reviewed, and which body or person received removal recommendations from the Judicial Complaints Commission.

25. He would welcome details on alternatives to pretrial detention, an indication of the average and maximum lengths of pretrial detention over the previous five years and a description of the compensation or other reparation granted to persons who were acquitted after having been subjected to prolonged pretrial detention.

26. It would be useful to receive information on why severe limitations were imposed on the holding of political meetings and anti-Government protests, whether consideration would be given, in the review of the Public Order Act, to relaxing the requirement of seven days' notice for public meetings, whether the failure to provide prior notification was punishable by a custodial sentence and whether police officers received training on respect for the right of peaceful assembly and on their duty to act in accordance with relevant international standards, including the Committee's general comment No. 37.

27. **Mr. Yigezu** said that he would be grateful to receive statistics on the numbers of human trafficking victims identified over the previous three years and referred to appropriate services and of persons prosecuted for, and convicted of, trafficking crimes, disaggregated by type of crime. Information on the redress granted to victims would also be appreciated, as would an indication of whether victims had access to free legal aid, interpretation services and timely and comprehensive care. He invited the delegation to provide details of the content of the Anti-Human Trafficking (Amendment) Bill and a tentative timeline for the Bill's adoption.

28. Regarding the protection of refugees, asylum-seekers and migrants, he wished to know whether the State party would consider harmonizing the Immigration and Deportation Act (No. 18 of 2010), which punished illegal entry, with section 11 (1) of the Refugees Act (No. 1 of 2017), which entitled asylum-seekers to apply for refugee status within seven days of entry, and with relevant international human rights instruments to which Zambia was a party, including the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and the Covenant. He would welcome clarification of the steps envisaged in law and practice to provide alternatives to detention for refugees, asylum-seekers and migrants and to release asylum-seekers until their refugee status had been determined. He would also be interested to know why domestic law imposed restrictions on refugees' rights to employment, education and freedom of movement and whether the State party planned to ensure refugees' freedom of movement and provide them with the documentation required to access basic services.

29. On freedom of expression, he sought clarification on whether provisions of chapter XVIII of the Penal Code could still be used to silence critics of the President, which would be inconsistent with article 20 (3) of the Constitution and with the Covenant, and on why section 67 of the Penal Code had not been repealed, despite having been ruled unconstitutional by the High Court.

The meeting was suspended at 11.15 a.m. and resumed at 11.45 a.m.

30. **A representative of Zambia** said that the country's total prison capacity stood at 10,650 and that the Correctional Service Act (No. 37 of 2021) had domesticated the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Government was working to reduce overcrowding by building new facilities, including a recently opened maximum-security prison in Mwembeshi and open-air farms for inmates with lesser sentences. The Correctional Service, the police and the judiciary, among other stakeholders, had launched an initiative to promote communication, coordination and cooperation on criminal justice matters. The Service liaised regularly with the judiciary to alleviate overcrowding, including by prioritizing pending trials and appeals. While most prisons in the country had been built during the colonial era, physical accessibility was being considered in the design of modern facilities.

31. Under the Children's Code Act, children in conflict with the law were required to be housed separately from adult prisoners, and a five-year plan for the construction of separate juvenile detention and correctional facilities had been drawn up. Women prisoners received health care at the medical facilities established in almost all prisons, and most prisons had running water or boreholes. There was a separate prison for inmates with mental disabilities.

32. **Ms. Daka-Oteng (Zambia)** said that the Constitutional Court was examining the constitutionality of the Cyber Security and Cyber Crimes Act. The Electoral Commission was being decentralized gradually, as funding became available. That Commission invited local, regional and international non-State actors to observe elections. Political parties were permitted to campaign in prisons, although during the most recent elections security concerns had prevented in-person campaigning, and prisoners had received information in writing. The Electoral Commission was reviewing the process of voting in prisons.

33. **A representative of Zambia** said that a prison officer who had employed lethal force while pursuing an escaped inmate had been convicted of manslaughter, while four officers had been convicted of murder following the death of another escaped inmate.

34. **Ms. Daka-Oteng (Zambia)** said that consultations on a bill on human rights defenders were under way. The Access to Information Bill had been the subject of extensive consultations and was currently being examined by the Ministry of Justice; it would be put forward for enactment in June 2023. Significant changes had been made to the membership of the Independent Broadcasting Authority to render it more efficient, effective and impartial. Although opposition leaders had frequently been denied access to some parts of the country under the previous Government, that situation had improved greatly, and much progress had been made in the development of the Public Gatherings Bill, which would soon be adopted.

35. No complaints of the destruction of places of worship or the barring of individuals from institutions or workplaces because they wore religious clothing had been lodged or reported in the media. Freedom of conscience was enshrined in the Constitution and could not be abrogated, and all religions could be practised freely. With regard to corporal punishment, several pieces of legislation, including the Education Act, had been amended to implement the constitutional prohibition of torture. Although the Government had recommended that the minimum age of criminal responsibility should be raised to 14 years, a number of stakeholders had insisted that it should be set at 12 years. Nevertheless, the authorities were examining how it could be raised further.

36. **A representative of Zambia** said that key figures, including the President, advocated an end to child marriage, and traditional leaders championed efforts to combat the phenomenon. Households headed by women or children had been made priority beneficiaries of social protection measures to address the poverty that often led to child marriage.

37. **Ms. Daka-Oteng (Zambia)** said that the President appointed judges on the basis of the recommendations of the Judicial Service Commission, which advertised posts in the media and interviewed applicants. Appointees were then vetted by the National Assembly. The process thus involved all three branches of government. Given that applicants were interviewed, there was an element of competition in the appointment of judges. The Commission's recommendations on the removal of judges were sent to the President, as the appointing authority, and the removal of a judge could be appealed at the High Court.

38. **A representative of Zambia** said that article 13 (3) of the Constitution provided that all arrested persons must be brought to trial within a reasonable time, although it did not specify how long that period should be. Compensation was provided to acquitted persons who were able to prove in court that their prosecution had been malicious. By law, an individual could be deemed a victim of trafficking in persons only if there was evidence of exploitation; if not, he or she was considered a victim of smuggling. The number of trafficking victims, most of whom came from the Horn of Africa, was increasing, and cases involving Zambian victims frequently entailed child labour or commercial sexual exploitation. Refugees in conflict with the law were detained, while other refugees who possessed the required documentation enjoyed freedom of movement in urban areas.

39. **A representative of Zambia** said that the many inconsistencies between the Immigration and Deportation Act and the Refugees Act would be addressed as part of the development of a national refugee policy. The number of detained refugees and asylum-seekers had decreased thanks to improved cooperation between government departments and twice-monthly monitoring to identify refugees and asylum-seekers among detainees; such persons were released to continue their asylum applications. Law enforcement officers could use a smartphone application to verify refugees' and asylum-seekers' documentation. A location had been identified for the construction of a detention centre for undocumented persons in conflict with the law, where they would be able to apply for asylum.

40. All refugees were required to live in one of three settlements; the mobility pass, which authorized them to leave the settlement, had been extended from 30 to 90 days. The asylum certificate, a provisional document issued for the duration of the asylum process, was valid for six months, and the status determination procedure had been reduced in practice to 30 days. Refugees and asylum-seekers were entitled to free education. Those who attended school in the settlements did not require any particular permit; those who sought employment

outside the settlements required a work permit, for which the fees were subsidized under an agreement with the Department of Immigration.

41. **A representative of Zambia** said, with regard to the timely delivery of justice for persons in detention, that the Attorney-General had initiated discussions on the possibility of establishing camp courts, which would supplement the existing justice system by travelling to detention centres to hear criminal and other matters. If the idea was accepted, legislation would be necessary for the courts to be established.

42. **A representative of Zambia** said that, while some stakeholders had advocated a 48-hour notice period for demonstrations, the five-day period that had ultimately been arrived at represented a balance between existing legislation and the country's obligations under international instruments such as the Covenant, bearing in mind police resources. The penalties for unlawful assembly were laid down in the Penal Code.

43. **A representative of Zambia** said that initial police training included a module on human rights. The Zambia Police Service had signed memorandums of understanding with non-governmental and international organizations on the provision of human rights education as part of in-service training.

44. **A representative of Zambia** said that, following the amendment of the 2008 Anti-Human Trafficking Act, individuals were no longer prosecuted for consenting to be smuggled but were instead considered to be victims of human trafficking and therefore had no need for legal aid.

45. **A representative of Zambia** said that the new Anti-Human Trafficking Act of 2022 banned and harshly punished trafficking in children and provided for the protection of victims and the establishment of an Anti-Human Trafficking Department under the Ministry of Home Affairs, whose functions included coordinating the activities of relevant stakeholders and institutions, investigating cases and educating the public about the dangers of trafficking.

46. **Ms. Daka-Oteng** (Zambia) said that the first holistic review of the Penal Code was under way and would address all inconsistencies in the law, including those pointed out by the Committee regarding the provisions on defamation of the President.

47. **Ms. Bassim** asked why the age of criminal responsibility had not been raised to 14 years despite the holding of consultations on the matter, why girls were prevented from returning to school after giving birth and whether boys who married early were similarly prevented from resuming their studies.

48. **Mr. Quezada Cabrera** asked whether there were specific restrictions on gatherings of a political nature and anti-Government demonstrations and, if so, what kinds of restrictions were imposed.

49. **Mr. El Haiba** said that, while more detailed statistics could be provided in writing, it would be useful to hear from the delegation how many complaints had been received and investigated by the Human Rights Commission. He also wished to know when the Gender Equity and Equality Commission would be established, who was responsible for vetting the members of the integrity committees and how the transparency of that process was ensured.

50. **Mr. Helfer** asked whether the Government provided legal representation or other forms of assistance to prisoners seeking to prove their innocence.

51. **A representative of Zambia** said that it had ultimately been decided that the age of criminal responsibility should be aligned with section 14 of the Penal Code, which set the age of criminal responsibility at 12 years.

52. **A representative of Zambia** said that the policy was that girls should return to school after giving birth, irrespective of their marital status. They were provided with education and other support, including in cases where they lived in safe houses or with their families. In line with the country's inclusive education policy, girls rescued from early marriage were also encouraged to return to school. Efforts were made to prevent their stigmatization and to raise awareness of the causes and consequences of early marriage. There was no impediment to boys' returning to school after marriage.

53. **Ms. Daka-Oteng** (Zambia) said that the heavy restrictions on political gatherings put in place by the previous regime had been reduced and that the Public Gatherings Bill, once enacted, would enhance freedom of association for political parties. Consultations regarding the establishment of the Gender Equity and Equality Commission were under way. Members of integrity committees were vetted by the law enforcement agencies. Individuals submitting appeals were entitled to legal assistance under the Constitution.

54. The Government welcomed the opportunity for introspection arising from the dialogue with the Committee. It hoped that the Committee had been able to see that, notwithstanding some persistent challenges, Zambia was steadily advancing towards the entrenchment of a culture of respect for human rights, which underpinned its development agenda.

The meeting rose at 12.50 p.m.