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HUMAN RIGHTS COMMITTEE
Ninetieth session
9 – 27 July 2007

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

ZAMBIA

UNEDITED VERSION

1. The Human Rights Committee considered the third periodic report of Zambia (CCPR/C/ZMB/3) at its 2454th and 2455th meetings, held on 9th and 10th July 2007 (CCPR/C/SR. 2454 and 2455). At its 2471st meeting, held on 20 July 2007 (CCPR/C/SR.2471), it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission, albeit late, of the State party's third periodic report and the opportunity thus offered to resume the dialogue with the State party. The State party should submit its reports in the future in accordance with the schedule established by the Committee.

3. The Committee appreciates the written replies submitted in advance by the delegation, as well as the detailed answers it provided to the Committee's oral questions. It particularly welcomes the efforts made by the State party, both in its periodic report and during the dialogue with the Committee, to acknowledge the difficulties faced in the implementation of the Covenant.

B. Positive aspects

4. The Committee welcomes the establishment:
 - a) in 1996, of the Zambian Human Rights Commission, with the mandate to promote and protect human rights;
 - b) in 1999, of the Police Public Complaint Authority, with the mandate to address complaints of abuse of authority, unlawful detentions, brutality or torture, unprofessional conduct, death in custody and debt collection by police officers.

5. The Committee notes with satisfaction that Zambia has made considerable progress in reducing maternal mortality;

6. The Committee welcomes the abolition of corporal punishment by amendments to the Penal Code, the Criminal Procedure Code, the Prisons Act and the Education Act;

7. The Committee welcomes the increased participation of women in Parliament, at the ministerial level, as well as in the public service, and encourages the State party to strengthen its efforts in this matter;

8. The Committee notes with satisfaction that the Electoral Act n° 12 of 2006 introduced a time frame of 180 days within which petitions relating to contentious elections matters should be heard and determined in the courts of law.

C. Principal subjects of concern and recommendations

9. The Committee notes that the Covenant is not directly applicable in domestic law, and is concerned that not all rights provided for in the Covenant have been included in the Constitution and the legislation, or recognized in an appropriate manner therein. It is concerned that since the last consideration of the State party's report in 1996, the process of harmonization of domestic law with the Covenant has not been completed. It also notes that no time frame has been determined for the completion of the process. (article 2)

The State party should now ensure the harmonization of its domestic law with the Covenant in a timely manner. It should also, throughout the constitutional review process, raise awareness of the public at large about the international obligations the State party has undertaken upon ratification of the Covenant.

10. The Committee notes with concern that the *Zambian Human Rights Commission* lacks funds to carry out its activities in an appropriate manner, and that it cannot receive financial support from international institutions or any other source unless expressly approved by the President. The Committee also regrets that it did not receive sufficient information on whether the Commission can make public and disseminate its reports and recommendations. (article 2)

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).

11. The Committee notes with concern that the State party did not give effect to the Committee's Views regarding Communication no. 390/1990 (*Bernard Lubuto v. Zambia*), before his demise on death row. It also notes the information provided by the delegation that compensation has been paid to the victim as recommended by the Committee in its Views regarding Communication no. 856/1999 (*Alex Soteli Chambala v. Zambia*), but regrets that such information remains insufficiently detailed. It also regrets that no information has been provided on measures adopted to ensure that no similar violations occur in the future, as recommended by the Committee. (article 2)

The State party should follow up on the Committee's recommendations in the above-mentioned cases and report thereon to the Committee as soon as possible.

12. The Committee reiterates its concern that the exceptions taken to the right not to be discriminated against, as provided for in article 23 of the Constitution, are not in compliance with articles 2, 3 and 26 of the Covenant. The Committee is concerned, in particular, about exceptions relating to (a) non-citizens; (b) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; and (c) the application of customary law.

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

13. The Committee notes with interest the steps undertaken by the State party to review and codify customary laws. It remains concerned by the persistence, in the meantime, of customary practices that are highly detrimental to women, such as discrimination in the area of marriage and divorce, early marriages and child bearing,

bride price and polygamy, as well as reported restrictions on women's freedom of movement. (articles 2 and 3)

The State party should strengthen its efforts to ensure compliance of customary law and practices with the rights provided for in the Covenant, and consider this issue as a high priority. It should pay particular attention to ensuring the full participation of women in the ongoing review and codification process of customary law and practices. It should adopt immediate and concrete steps to discourage the persistence of customary practices that are highly detrimental to women's rights.

14. The Committee notes with concern that the priority of statutory law over customary law is not always ensured in practice, due especially to the low level of awareness by people of their rights, in particular their right to appeal customary courts' decisions before statutory courts, and despite efforts made by the State party, insufficient training provided to those involved in the administration of local justice. (articles 2 and 3)

The State party should increase its efforts to raise awareness about the priority of statutory law over customary law and practice, and about 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.

15. The Committee reiterates its concern in relation to the lack of clarity of the legal provisions governing the introduction and administration of a state of emergency. It notes in particular that under article 25 of the Constitution, derogations may be made to some of the rights identified as non-derogable under article 4 of the Covenant.

The State party should bring article 25 of the Constitution into 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.

16. The Committee notes that the State party is currently considering the adoption of legislation to counter terrorism. (articles 2 and 4)

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 counter-terrorism provisions and laws. The State party should also bear in mind the need to define acts of terrorism in a precise and narrow manner.

17. The Committee notes with appreciation the *de facto moratorium* on executions implemented in Zambia since 1997, as well as the commutation to imprisonment of many

death sentences, but is concerned by the high number of persons remaining on death row. The Committee notes that there has been a public discussion of the death penalty, albeit with indications that the discussion has not been based on a fully informed documentation of the issues. The Committee also reiterates its view that mandatory imposition of death penalty for aggravated robbery in which a firearm is used is in violation of article 6 (2) of the Covenant.

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 penalties of all those currently on death row.

18. The Committee is concerned that despite progress made, maternal mortality remains high in Zambia. While noting the considerable efforts made by the State party in the area of family planning, the Committee is concerned that the requirement that three physicians must consent to an abortion may constitute a significant obstacle for women wishing to undergo legal and therefore safe abortion. (article 6)

The State party is encouraged to increase its efforts in combating maternal mortality. The State party 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.

19. The Committee is concerned that, despite numerous and positive measures adopted to combat violence and sexual abuse against women, the phenomenon continues to be a serious problem in Zambia. It is concerned that in practice, cases of indecent assault, defilement and rape tend to be considered as customary issues and are therefore often dealt with by customary courts rather than criminal courts. The Committee also notes with particular concern information according to which young girls are at risk of abuse when commuting to school and at the school. (articles 3, 6 and 7)

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. The State party 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.

20. The Committee, while noting that committing an act of violence against a prisoner is an offence under the Prisons Act, regrets that it has not received information on the practical implementation of this Act. The Committee appreciates that visiting justices as well as the Human Rights Commission may visit and inspect prisons, but regrets it has not received any qualitative assessment about the efficiency of such arrangements. While noting that female prisoners are not to be guarded by male officers, it also remains concerned about information according to which this rule has sometimes been relaxed, due to a lack of female officers, both in police stations and in prisons. (article 7)

The State party should ensure that any act of violence committed against a prisoner is duly prosecuted and punished, and that women held in police custody or in prisons are never guarded by male officers. The State party should provide the Committee with more detailed information on the system put in place to hear complaints of prisoners for acts of violence.

21. The Committee, while noting efforts made by the State party to impose disciplinary sentences on police officers who have committed acts of torture or ill-treatment, regrets that it has not received sufficiently detailed information on prosecutions initiated, convictions and sentences handed down, and reparation granted in relation to such acts. (article 7)

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.

22. The Committee remains concerned by information according to which the legal recognition of the rights of parents and teachers to administer punishment on children brings confusion and jeopardizes their full protection against ill-treatment. It is further concerned that corporal punishment is still widely practised on children. (articles 7 and 24)

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.

23. The Committee expresses concern about the intolerable rate of prison overcrowding and the very poor conditions in places of detention. It notes however that the State party has acknowledged this situation and adopted some measures to address it. The Committee is also concerned that the length of pre-trial detention is in many cases

excessive. (articles 7, 9 and 10)

The State party should develop alternative measures to imprisonment. It should take measures to ensure that the accused awaiting trial are not kept in custody for an unreasonable period of time. It should significantly increase its efforts to guarantee the right of detainees to be treated with humanity and dignity, by ensuring that they live in healthy conditions and have adequate access to health care and food. To the extent that the State party is unable to meet the needs of detainees, it should immediately take action to reduce the prison population.

24. The Committee notes with concern that the Penal Code criminalizes same-sex sexual activities between consenting adults. (articles 17 and 26)

The State party should repeal such provision of the Penal Code.

25. The Committee notes with particular concern that under the Penal Code, defamation against the president as well as publication of false news are still considered as criminal offences. The Committee reiterates its concern about reports of arrests and charges brought against journalists for the publication of articles critical of the Government, which are used as harassment and censorship techniques. (article 19)

The State party should repeal the above-mentioned provisions of the Penal Code. 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.

26. The Committee reiterates its concern that under the Penal Code, 8 year old children are criminally responsible for their actions. (article 24)

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

27. The Committee requests the State party to widely disseminate the present concluding observations and its third periodic report to the general public, including by publishing them on the government website, placing them in all public libraries, and distributing them to the leaders of customary institutions.

28. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on the assessment of the situation and the implementation of the Committee's recommendations in paragraphs 10, 12, 13 and 23.

29. The Committee requests the State party to provide in its next report, due to be submitted by 20 July 2011, information on the remaining recommendations made and on the Covenant as a whole.
