

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COMMITTEE 90TH SESSION ZAMBIA, 3RD REPORT 9 - 10 JULY

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Information submitted to the Committee

The State report

On 16 January 2006 Zambia submitted its 3rd periodic report, originally due in 1998, to the Human Rights Committee (the ‘Committee’)¹ The report addressed the individual articles of the International Covenant on

¹ CCRP/C/ZMB/3, 25 April 2006, available at <http://www.ohchr.org/english/bodies/hrc/hrca90.htm>

Civil and Political Rights (the ‘Covenant’) with regard to constitutional provisions, relevant legislation, judicial practices and policy. This included a review of the status of the Covenant under domestic law, Zambia’s dualist legal system and the gaps that exist between customary law and statutory law. Thematic issues addressed in the report included the application of the death penalty; maternal mortality rates, abortion, HIV and life expectancy in relation to health care; and treatment by police and prison conditions in relation to allegations of torture and ill-treatment. Particular emphasis was also placed on the rights of women in the spheres of education, politics, and the public sector in general. Many other issues were collectively raised and discussed in light of the new National Human Rights Commission established in Zambia. In its follow up recommendations the Committee urged the State party to submit its reports in the future, in accordance with the schedule established by the Committee.

The list of issues

Country rapporteur Mr Abdelfattah Amor, submitted a list of issues to the State prior to their review before the Committee.² The list focused mostly on the judicial system, prison conditions, the criminal responsibility of children and the right to fair trial, women’s rights and violence against women, the right to freedom of thought and expression; and efforts made to disseminate information regarding the Covenant. The document also listed concerns regarding the harmonization of Zambian anti-terrorism laws with the national Constitution and the Covenant.

The State later provided a thorough response to the list of issues, supported by statistical data. With regards to the status of the Covenant, Zambia clearly stated that it does not take precedence over domestic law, and that in August 2003 the Government appointed a Constitutional Review Commission whose mandate, among other elements, was to eliminate provisions within the Constitution which it perceived as discriminatory. As to the issue of customary law, the State party recognized the need to examine and eliminate discriminatory practices in the current legislation, as determined by the Zambia Law Development Commission on the restatement of customary law in 2003. Concerning gender-based violence, the State claimed to have taken several steps, including the development of a Gender Based Violence Bill and the adoption of the National Gender Policy in 2000. In order to deal with rising health care concerns, the Government pointed to its introduction of Emergency Obstetric Care, embarking on sensitisation to family planning services, and the use of family planning clinics. However, the Government expressed that there is inadequate education among Zambian people, which makes it very difficult for them to understand the importance of these services.

In relation to the police and prisons, both the *Prisons Act* and *Police Act* were highlighted as good reference points when it comes to the proper use of force by police, and treatment of prisoners. The Government also stated that the administration of justice is a priority area of the Governance Chapter of the Fifth National Development Plan (FNDP), which is designed to provide access to justice for all.

NGO parallel reports

Four parallel reports were submitted to the Committee. The report by Global Initiative focused solely on corporal punishment of children, highlighting the use of corporal punishment at home, in schools and the penal system, despite its use being illegal in the majority of these settings.³ The report by Conscience and Peace Tax International commented on the issue of conscientious objection in Zambian schools in relation to the Zambian Military.⁴ It recommended that States be encouraged to develop laws which would protect the right to have or develop a conscientious objection to military service, in addition to investigating compulsory military training in schools. The World Organisation Against Torture (OMCT) submitted a series of three

² CCPR/C/ZMB/Q/3, 27 November 2006, available at <http://ohchr.org/english/bodies/hrc/hrcs90.htm>

³ Briefing From Global Initiative To End All Corporal Punishment Of Children, October/November 2006, available at <http://www.ohchr.org/english/bodies/hrc/docs/ngos/Globalinitiative.pdf>

⁴ Conscience And Peace Tax International, October 2006, available at http://www.ohchr.org/english/bodies/hrc/docs88/CPTI_Zambia.doc

separate reports. Part I highlighted such issues as Zambia's Human Rights Commission, the death penalty, the police, and the situation in prisons.⁵ Part II dealt with women's rights, including such issues as gender inequality, efforts towards legal reform, and women's rights in light of both customary and statutory law.⁶ Part III centred on the situation of children's rights, introducing the general status of children in Zambian society, particularly with regards to excessive use of force against them, the death penalty, torture, corporal punishment, sexual violence, slavery, arbitrary arrest, and the minimum age of responsibility.⁷ The final report was submitted by Global Rights LGBTI (Lesbians Gay Bisexual Transgender Initiative).⁸ It described Zambia's lack of determination in addressing discrimination against people based on sexual orientation and preference, and that current provisions in place within Zambian customary law and the Constitution "...reinforce social stigma against gay, lesbian, bisexual, and transgender individuals and expose them to the risk of deprivation of liberty, life physical integrity, and health". According to Global Rights, this constitutes a violation of Articles 2(1), 17 and 26 of the ICCPR.

Themes and issues

The Zambian delegation included Ms. Gertrude M. Imbwae (Permanent Secretary); H.E Love Mtesa (Permanent Representative, Geneva); Ms. Encyla Sinjela (Counsellor, Zambian Mission Geneva); Ms. Maria M. Kawimbe (Ministry of Justice); Ms. Sindiso N. Kankasa (Ministry of Justice); Ms. Monty Mulikta (Ministry of Justice); Mr. Lloyd Chilundika (Prison Service, Kabwe); Mr. John C. Zulu (Ministry of Sport, Youth & Child Development); Mr. Geenwell Lyempe (Immigration Department); Mr. W.M. Kaonga (Ministry of Community Development & Social Services); Mr. Juliana Mwila (Ministry of Information & Broadcasting Services); Mr. Joe Kapembwa (Gender in Development Division); Mr. Auxensio Daka (Zambia Law Development Commission); Mr. Douglas Tambulukani (Commissioner of Refugees); Ms. Mwamba Chanda (Judiciary) and Mr. Ronald Kaulue (Ministry Education).

In her opening statement, the head of the Zambian delegation, Ms. Imbwae, expressed her gratitude in being given the opportunity to enter into dialogue with the Committee. She introduced her delegation and commented on developments that have occurred recently in Zambia, noting that in addition to constitutional developments there has been an increase in the number of human rights education programs in the country. Ms. Imbwae stressed that in future the Government will endeavour to submit timely reports. She informed the Committee that the State is developing its local capacity to compile its own State reports.

Status of the Covenant under domestic law

The compatibility of Zambian domestic law with the Covenant received significant attention in the Committee's discussions. The State Party shed light on the dualist nature of its legal system by highlighting that the Covenant does not take precedence over domestic law. The delegation explained that civil and political rights have been incorporated into the Zambian Constitution and domestic legislation. However, many members expressed concern at the partial nature of the incorporation of Convention provisions into domestic law. Committee member Mr. Amor commented that there are Covenant provisions clearly not covered in domestic law. He cited examples, including the 'problematic' nature of customary law, and proceeded to cross reference articles of the Zambian Constitution which he claimed did not comply with the

⁵ The World Organization Against Torture (OMCT) Part I, July 2007, available at http://www.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia3.pdf

⁶ The World Organization Against Torture (OMCT) Part II, July 2007, available at http://www.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia2.pdf

⁷ The World Organization Against Torture (OMCT) Part III, July 2007, available at http://www.ohchr.org/english/bodies/hrc/docs/ngos/omct_zambia1.pdf

⁸ Global Rights LGBTI (Lesbians Gay Bisexual Transgender Initiative), available at http://www.ohchr.org/english/bodies/hrc/docs/ngos/LGBTShadow_Zambia.pdf

Covenant. The Committee stated that Zambian legislation does not give the Covenant ‘the force of law’ and enquired about what was being done to bring the Constitution in line with the Covenant.

The State party made reference to Zambian constitutional reform and noted that it involved a process of consultation with stakeholders. Although international obligations have been taken into account, the delegation stated that this cannot override the citizens’ opinion. The State party acknowledged certain limitations on the way the Covenant was ‘domesticated’; however they stated that the rights protected do not need alteration. Rather, enabling legislation must be enacted to further protect the rights already provided in the Constitution.

Of particular concern to the Committee was the derogation of rights during conflict and the incompatibility of the Covenant with customary law in Zambia. Committee member Mr. Nigel Rodney expressed his apprehension that (as acknowledged by the State) the Zambian Constitution was not in accordance with Article 4 of the Covenant concerning derogation in states of emergency. Specifically, in the Zambian Constitution there is no bar on suspending certain rights which are non-derogable in the Covenant. The Chairperson stressed in his concluding comments that this matter must be addressed.

Compatibility between domestic customary law and the rights protected in the Covenant was a prevalent theme in the discussion. Of particular concern was the effect of customary law on the rights of women. The Committee asked for elaboration on the role of women in the process of customary law reform. The delegation informed the Committee about the consultative process undertaken as part of the reform and explained that both men and women were included. The delegation assured the Committee that female perspectives were included in the final report. Additionally the State has taken on board the views of certain NGOs representing women’s rights.

The lack of legal representation and access to appeals in these courts was also questioned. Mr. Amor highlighted these difficulties, making reference to article 77 of the Zambian report, which directly states that ensuring equality between the sexes is made difficult by customary law. Committee member Ms. Wedgewood called upon the State to declare a ‘national emergency’ regarding women’s rights and to make a law which clearly forbids customary courts from treating men and women differently.

The delegation responded that a study has been undertaken by the Zambian Government to investigate the conformity of customary law with current socio-political and economic values in the State. The Zambian delegation made reference to the vast cultural diversity in the country, and insisted that positive cultural practices must be incorporated into domestic law. The delegation ensured the Committee that the application of customary law will only be allowed in cases which are not ‘repugnant to natural justice’ and noted that ‘there is no customary law which is above any human rights’. The delegation detailed the appeals process from the customary courts to the subordinate courts and stated that lawyers were not necessary because citizens have access to them on appeal. The validity of this point was called into question by members of the Committee, particularly member Ms. Wedgewood.

Member Mr. Lallah suggested a process of consultation with customary chiefs. This would involve teaching chiefs about the Covenant, asking them to highlight discrepancies and to suggest changes that could be made to customary law. The Committee members stressed the importance of investigating the impact of customary law on all citizens and ensuring that legal practices are in line with Covenant provisions. This would include raising the awareness of the administrators of the courts.

In his concluding comments, the Chairperson commented that although he has no desire to weaken the role of traditional law, the mandate of the Committee is to protect the rights enshrined in the Covenant. He stressed that the Committee counts on the State to bring customary law in line with the Covenant. He noted that it may be a long-term effort in such a diverse country, but it was one that the Committee must insist upon.

In its concluding observations, the Committee urged the State party to ensure the harmonization of its domestic law with the Covenant in a timely manner, and also to raise awareness of the public at large about the international obligations of the State to the Covenant. Furthermore, the Committee recommended the State to strengthen its efforts to ensure compliance of customary law and practices with the rights provided for in the Covenant, which it considers a high priority. Lastly, the Committee recommended that 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.

Independence of the judiciary

The Zambian delegation spoke at length about issues regarding the independence of the judiciary. These included: the role of judges, conditions of service, tenure, judicial training and expediency of trials.

Of greatest concern to the Committee was the tenure and security of justices in Zambia. According to article 98 of the Zambian Constitution, a judge may be relieved of duty for an ‘inability to perform the functions of his office.’⁹ Committee members were concerned about this ability to dismiss judges and questioned the power given to the Zambian Judicial Complaints Authority (JCA), particularly as it relates to the Supreme Court.

The delegation ensured the Committee of judges’ security and noted that no judge has ever been dismissed. For dismissal to occur the President must appoint a tribunal to investigate accusations against the judge. The Committee was advised that the higher court judges are not subject to the authority of the JCA. The JCA only monitors the ‘lower bench’ and only in regards to abuse of power, never in relation to judgements made. The Committee inquired as to why only 1/5 of recommendations made by the JCA were implemented, however the delegation did not respond.

Commenting on the role of judges in defending and implementing the rights of the Covenant, the delegation reiterated that the Covenant does not take precedence over the Zambian Constitution. Only violations reflected in the Constitution can come before a court. Justices are encouraged to use Covenant provisions in their judgements although they are not binding.

The Committee was concerned about the conditions under which magistrates and judges are required to work. One Committee member expressed hope that the ‘legitimate demands’ of magistrates would be met. These conditions hamper the administration of justice through limiting the number of magistrates willing to work, thus slowing down the expediency of trials.

The delegation informed the Committee that new courtroom complexes are being built, one of which has been completed in the province of Lusaka. To ensure the expediency of civil and criminal trails, judges are required to submit statistics on how many cases they have heard and explain the reasons for not meeting expected quotas. According to the delegation, Zambia is also attempting to increase the number of legal professionals by providing both daytime and evening legal courses at the University of Zambia Law School.

Police

The problem of ‘unethical methods’ of investigation and ‘excessive use of force’ by police officers in Zambia was of serious concern to the Committee. The Committee highlighted the lack of adequate domestic legislation to deal with these issues and encouraged the State party to criminalise torture, as it has been defined in international law.

⁹ *The Constitution of Zambia Act 1996*. Available from <http://www.thezambian.com/Constitution/1996constitutionact.aspx>

The delegation notified the Committee that police officers are required to go through basic training, which includes some coverage of human rights. However there is limited training in ‘investigation techniques’ and no adequate forensic equipment. The delegation commented that in 2006 a new training program commenced for new recruits that includes investigation techniques.

The delegation noted that the use of ‘unethical methods’ of interrogation is presently being investigated by the Government. All officers who are suspected of such crimes are reported to the Police Complaints Authority. Each police station also has a Supervisor of Police, who monitors police activity. Committee member Mr. Khalil commented that this was a very innovative procedure. Furthermore, all police officers are trained in the use of firearms and force and are being taught to United Nations standards. However, the delegation commented that resources are limited and that therefore there are some ‘lapses’.

Two reported cases of severe police torture were highlighted by the Committee. These included the case of police tying a man to a grill for three days and beating him. This man later suffered permanent paralysis. Lusaka police also reportedly beat a man with an iron bar after he demanded repayment of a debt from a member of Parliament. The delegation did not have detailed knowledge of these cases and were unaware of any disciplinary action taken.

The Committee highlighted the importance of police in the protection of women from gender based violence. The delegation acknowledged this and informed the Committee that all police officers are trained in how to properly handle such cases. The delegation referred to the State report, which outlines the implementation of Victim Support Units (VSU) at some police stations. These units offer victims a less intimidating environment and also provide specialised services such as counselling. The Committee referred to independent reports, stating that VSUs were underfunded, and enquired what was being done to remedy this. No response was given by the State party to this final question.

In its concluding observations, the Committee welcomed the establishment of the Police Public Complaint Authority in 1999. The State party was also encouraged to increase the training of police and the staff of the Victim Support Unit on violence against women, including sexual abuse and domestic violence. The Committee urged the State to further adopt specific legislation criminalizing domestic violence and to significantly increase its efforts to ensure that police investigators are adequately trained in techniques of investigations and in human rights.

Other enforcement mechanisms

During the plenary discussions Zambia briefly mentioned its national Human Rights Commission (ZHRC). This ZHRC is charged with investigating human rights abuses, making recommendations and publishing annual reports. According to the delegation, the ZHRC operates autonomously from the Government and its recommendations are considered persuasive.

Committee members enquired as to why the most recent available report is from 2004. The delegation responded that the ZHRC is an autonomous institution and therefore the State could not comment. However they suggested a possible cause could be lack of funding. Committee member Sir. Rodley remarked that it was ‘a bit odd’ that they were not given copies of the most recent report and Mrs. Wedgewood commented that there should be a representative from the ZHRC present] In future, the State Party committed to inviting a representative to accompany the delegation.

Committee member Mr. Bhagwati asked if the ZHRC examined ‘administrative deviance’ or if there was another remedy available such as an Ombudsman. The delegation advised the Committee that in addition to the ZHRC, Zambia has an investigator general who examines civil service grievances, a judicial complaints authority and a police complaints authority.

In its concluding observations, the Committee praised the establishment in 1996 of the Zambian Human Rights Commission. It also recommended the State party should make all possible efforts to increase the budgetary resources of the ZHRC. It should also ensure that the Commission is able to seek and receive funds from international institutions. Furthermore, the Committee urged the State to enhance the powers and status of the Commission, as well as ensure that the rules governing the Commission are in full compliance with the Paris Principles.¹⁰

Prison conditions

The State party assured the Committee that prison reforms were being carried out under the 'Fifth National Development Plan'. They explained that torture was prohibited under the Zambian Constitution and violence against prisoners was illegal under section 97 of the *Prisons Act*. To ensure humane treatment all police and prison officers are given training in human rights.

The Committee commended Zambia on its policy of building and refurbishing of prisons, although noted that in most circumstances this type of action is not usually commended. However, the Committee believed that the situation in Zambia warranted the policy. Committee members enquired about the extent of prison crowding and measures taken by the Government to create alternatives to imprisonment. The State party elaborated on its prison building and rehabilitation program and noted that there have been reductions in overcrowding. Currently, legislation is being amended to accommodate for alternatives to incarceration.

Committee member Ms. Majodina expressed concern regarding reports of sexual coercion and violence against women who are incarcerated. She enquired about the status of the children of female prisoners and about treatment offered to pregnant prisoners. The delegation stated categorically that sexual coercion does not exist within their facilities. They elaborated by explaining that the *Prisons Act* forbids supervision of female prisoners by male guards. Pregnant women in prison are given antenatal care and women may keep their children with them until the age of four. The State noted however, that prisons still remain undesirable places to hold children.

The Committee questioned the level of privacy accorded to prisoners when holding discussions with visiting magistrates. Mr. Shearer elaborated on this, asking if prisoners fear retribution for complaints. However, the delegation assured the Committee that prisoners are left alone when speaking to justices and issues discussed are kept in the strictest confidence. To this date there have been no examples of victimization after making a complaint.

The treatment of people incarcerated in the mental health system was also raised by the Committee. The Committee noted that this group is highly vulnerable to human rights abuses and enquired what measures are being taken to ensure these people receive humane treatment. There was no representative from the Zambian health department present to respond. However the delegation noted there is a 'crisis' regarding human and material resources in all hospitals.

In its concluding observations, the Committee regretted it had not received information on the practical implementation of the *Prisons Act*. It recommended that the State party should ensure that any act of violence committed against a prisoner is duly prosecuted and punished, and that 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. The State should also ensure that women held in prisons or police stations are never guarded by male officers. Lastly, the State was requested to immediately take action to reduce the prison population by developing alternative measures to imprisonment.

¹⁰ Principles Relating to the Status of National Institutions, adopted by the General Assembly resolution 48/134 of 20 December 1993

Death penalty

The legality of the death penalty under Zambian law was raised a number of times in the course of discussions. The State party stressed that Zambian citizens surveyed as part of the Constitutional reform process were generally in favour of retaining the death penalty. Committee member Mr. Shearer commented that public opinion can be easily affected by one or two cases. The delegation noted that although the death penalty is still legal, no person has been executed since 1997. The Zambian President has declared that no person on death row will be executed whilst he is in office. The President has also stated his intention to create a statutory instrument which would commute the death sentences of all inmates on death row. However, he has yet to act on this.

Committee members Mr. Shearer and Mr. Amor welcomed the moratorium on execution. However, they enquired as to how many prisoners were still on death row and asked if their sentences have all been commuted. The Zambian delegation did not address these questions.

In its concluding observations, the Committee reiterated its view that mandatory imposition of the death penalty for aggravated robbery in which a firearm is used is in violation of Article 6(2) of the Covenant. They recommended that the State party should review its Penal Code to ensure that the death penalty is imposed only for the most serious crimes. They should also consider the commutation of the death penalties of all those currently on death row.

Counter- terrorism

There was some discussion on the issue of counter-terrorism legislation and its impact on the protection of human rights. The State's main comment outlined the absence of enacted legislation in this area. However, the State noted that a draft piece of legislation is presently being considered. Committee member Mr. Khahlil, highlighted the concerns of the Committee, explaining that no piece of the criminal code should infringe upon the rights laid out in the Covenant. He suggested that the Zambian Government should take this into consideration when drafting new legislation. In its concluding observations, the Committee noted that the State party is currently considering the adoption of legislation to counter terrorism (Articles 2 and 4). It recommended that the State 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.

Freedom of expression

The 2002 *Freedom of Expression Bill* was commended by the Committee but questions were raised regarding why it had not yet been adopted. According to the delegation, this *Bill* was withdrawn in 2002 in order to examine 'contentious provisions'.

The Committee also underscored the importance of protecting the rights of journalists in Zambia. Whilst acknowledging the adequacy of constitutional provisions, Committee members called into question the 'practical situation on the ground'. According to NGO reports, harassment of journalists by the police is very common. The Committee reiterated that this severely curtails freedom of expression in the country. The Zambian delegation stated that journalists generally enjoy freedom of expression and no laws exist which infringe upon that freedom.

The Committee offered examples of abuses from NGO reports. These included accounts of journalists being beaten by police. Discussion also included the situation of three journalists found to be in 'gross contempt of the National Assembly', without the observance of any of the procedural guarantees outlined in the Covenant.

The Zambian party noted that this matter had been resolved in the High Court. They ruled in this instance that the National Assembly has no power to sentence any person to criminal imprisonment.

Currently in Zambia defamation of the President remains illegal. The Committee acknowledged the importance of defending against defamation, yet concluded that the imposition of prison sentences to punish such acts contravened Article 19 of the Covenant.

The State party was asked to comment on allegations made against opposition leader Michael Sata and reports of him being denied a rally permit. According to the delegation, Mr. Sata has been charged with espionage and his case is still pending before the High Court. The delegation admitted to having no information on the issue of the rally permit. However, they commented on the perceived success of their new procedures for managing public order and noted that they received very few complaints regarding their *Public Order Act*.

In its concluding observations the Committee noted 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. They urged the State to repeal these provisions and find other means to ensure accountability of the press so as to be in full compliance with the Covenant, in particular with the right to freedom of expression.

Women

The Committee was highly critical of Zambian policies regarding women’s rights, most specifically on the question of protection from gender-based violence. Committee members claimed that issues of sexual offences were not high on the Zambian political agenda. The delegation drew attention to the Government of Zambia’s recent amendment to the Penal Code, which hands down stiffer penalties for sexually-based offences. In addition the government is currently drafting a gender-based violence Bill but the Committee expressed disappointment that the Bill has not been tabled by Parliament.

The Committee noted that gender discrimination and violence against women cannot be settled only by legislation. They asked the delegation to outline what practical measures have also been taken. The delegation elaborated on their policy of training police officers on gender and gender-based offences and on their installation of VSUs in police stations. The Committee asked what was being done to educate serving police officers, as this appeared to be a gap in policy. The State party informed the Committee that serving officers are offered refresher courses, which includes training in gender-based violence.

The existence of anti-discrimination legislation or specific policies to empower women was also examined by the Committee. The delegation did not adequately respond to these enquires. Rather, they stated that a report to the Committee on the Elimination of Discrimination Against Women was being prepared, which will provide detailed information on such issues.

Customary law was viewed by both the Committee and the delegation as an obstacle to ensuring gender equality. The delegation noted in its report that customary law has the ‘tendency of suppressing women’s rights’.¹¹ The delegation reminded the Committee of the governmental study into customary law and its compatibility with socio-political and economic values. They added that customary court magistrates are also being trained in gender-based violence and gender equality. However, this was not enough to convince the Committee that adequate actions were being taken. Committee member Ms. Wedgewood stated that ‘I understand the need to be differential and gradual but the time is up. I invite you to send the message to your political branches and your judges. This cannot take another 20 years.’

Maternal mortality rates were another area of concern for the Committee. The Committee commended Zambia for progress in this area but remained particularly concerned about access to safe abortion centres and

¹¹ CCPR/C/ZMB3 25th April 2006 pg 21

fatalities caused by illegal abortions. In Zambia a woman must get the approval of three medical practitioners to have an abortion. The Committee noted that this process was too complex and should be simplified so women can access legal abortions more easily. The delegation emphasised the distinction between legal and illegal abortions. In Zambia a legal abortion must be carried out for medical reasons and therefore needs medical approval. Abortions performed for any other reason are illegal under the 1972 *Termination of Pregnancy Act*. The delegation noted that if a woman needs a medical abortion she must attend a clinic. According to the delegation these clinics are staffed by enough doctors to ensure that the approval process is easy. The delegation added that there are emergency measures in place in all nine provinces to assist any woman who has difficulties during pregnancy and childbirth.

In its concluding observations the Committee praised Zambia for making considerable progress in reducing maternal mortality and urged that they should continue to do so. They also welcomed the increased participation of women in Parliament, and encouraged the State party to further strengthen its efforts in this matter. The Committee urged that the State 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 also adopt immediate and concrete steps to discourage the persistence of customary practices that are highly detrimental to woman's rights. Lastly, the Committee recommended that the State party amend its abortion laws to help women avoid unwanted pregnancies so as to not have to resort to illegal abortions that could put their lives at risk.

Children

The Zambian delegation outlined measures taken to prevent corporal punishment in schools and other institutions of care. Corporal punishment has been outlawed in Zambia by various pieces of legislation, including a *Penal Code Amendment Act*, *Educational Amendment Act* and *Prisons Amendment Act*. Any person found to be using corporal punishment will be charged under the Zambian Penal Code. Other measures taken by the Zambian government include education and sensitization campaigns for school authorities, teachers and other care-givers. The government educates children about their rights and has initiated a general awareness campaign regarding the rights of children.

The Commission asked the delegation why there has been no change to the Penal Code provision defining the age of criminal responsibility as 8 years old. This provision has been roundly criticised by groups within Zambia and other human rights treaty monitoring bodies¹² However, the delegation commented that the current *Juveniles Act* contains provisions that sufficiently protect children between the ages of 8 and 12.

A 2003 NGO report examined the case of 6 year-old boy held in prison on murder charges, accused of killing a playmate. He was subsequently released but the Committee vigorously stated that the detention was unacceptable and inquired into disciplinary action taken against those responsible for the arrest. The State party expressed regret about the event but was unaware of any disciplinary action taken.

In its concluding observations, the Committee welcomed the abolition of corporal punishment by amendments to the Penal Code, Criminal Procedure Code, the *Prisons Act*, and the *Education Act*. It recommended that the State prohibit all forms of violence against children wherever it occurs, including corporal punishment in the schools, and undertake information efforts with respect to appropriate protection of children from violence. Also, the State party adopt immediate and concrete measures to combat sexual violence against young girls in the school environment. Lastly, the State party should take action to raise the minimum age of criminal responsibility to an acceptable level under international standards.

Refugees and non-nationals

¹² See CRC/C/15/Add.206 2 July 2003, paras. 19-20.

The Committee expressed concern regarding the exemption clause in Article 23 of the Zambian Constitution denying refugees and non-nationals protection from non-discrimination legislation. This stands in contravention to Article 2 of the Covenant, which provides that the rights of all individuals within a State's territory must be protected. Also of concern to the Committee was section 3 of the *Immigration and Deportation Act*, which gives Zambian officials the right to arrest immigrants without a warrant, detain and deport them. Zambia responded that an immigrant can only be deported if he is convicted of an offence or if he 'involves himself in activities which endanger peace and security' in the country. In both cases the Minister of Home Affairs must issue a deportation warrant. This warrant can then be challenged in the High Court.

The Committee congratulated Zambia on the high number of refugees it accepts and asked what measures have been taken to protect the rights of refugee women. The Committee was informed that refugee women enjoy the same rights as all other women in the country and are subject to no discrimination regarding their status.

Sexual orientation

Although not raised in the Committee's list of issues, the question of non-discrimination on the basis of sexual orientation was raised by Committee members Mr. O'Flaherty and Sir Rodley. The Committee expressed serious concern that the Government of Zambia has not adequately protected the rights of people choosing to engage in same-sex activities and drew attention to the prohibition against homosexuality in the Zambian Penal Code. The Committee asked Zambia if it was considering repealing those provisions and whether other measures have been taken to ensure that lesbian, gay and bisexual persons are not subject to discrimination.

The delegation's response was muted, making reference to the 'Christian nature of Zambian society' and to the prevalence of ethnic groups in Zambia which 'do not tolerate homosexuality'. The delegation further elaborated that homosexuality was 'culturally strange' to most Zambians and that it will take a long time for Zambians to accept any form of permissibility. Mr. Rodley noted that difference in religious and customary beliefs do not excuse discrimination.

The delegation of Zambia proceeded to make reference to a vote that had taken place under the 1503 complaint procedure at the former Human Rights Commission. According to the delegation, this instance involved the Human Rights Commission voting against pursuing a complaint regarding the treatment of people in same-sex relationships in Zambia. The Zambian delegation claimed that the Commission, in so deciding, voted that Zambia 'should be allowed to continue its belief'. The State party was cautioned not to discuss the 1503 procedure as it was a confidential procedure. The Committee also dismissed the delegation's claims, stating that a vote not to consider does not mean that no human rights abuses were occurring; it was simply a vote not to consider the claim.

In its concluding observations, the Committee noted with concern that the Penal Code criminalizes same-sex sexual activities between consenting adults. They recommended that the State party should repeal such provisions of the Penal Code.

Conclusions and next steps

In his concluding remarks Mr Posada noted that customary law and its implications are very important. He made it clear that the Committees intentions are not to limit or suppress these laws, but rather voiced the concern that Zambia must continue to endeavour to adhere to the standards of the Covenant, as many of the customary laws currently implemented do not comply with the Covenant. He insisted that Zambia revise the role of the Covenant in domestic legislation, and that Zambia must continue to raise awareness of the

Covenant so that the rights enshrined in it are duly protected. Lastly, Mr Posada voiced concern over the fact that the Zambian Constitution does not specify limits and issues to be considered during a state of emergency, in reference to their previous state of emergency of 1997 where articles and rights of the Covenant were suspended. He strongly urged a review of this issue to ensure that it does not happen again.

In its concluding observations, the Committee requested the State party widely disseminate the 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.

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

Last revised and updated: 22 August 2007.

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ABOUT THE PUBLICATION

The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the six treaty bodies (all but the Committee on the Rights of the Child) and provides an overview of every treaty body session. It is currently an online publication that can be found at <http://www.ishr.ch/hrm/TMBs>.

COMMENTS AND FURTHER INFORMATION

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