



ZAMBIA: RISING IMPUNITY AND LACK OF ACCOUNTABILITY

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC
REVIEW, 28TH SESSION OF THE UPR WORKING GROUP, NOVEMBER 2017

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First published in 2016

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: AFR 63/6613/2017

March 2017

Original language: English

amnesty.org

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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Zambia in November 2017. In it, Amnesty International evaluates the implementation of recommendations made in Zambia's previous UPR, assesses the national human rights framework and the human rights situation on the ground, and makes recommendations to the government of Zambia to address the human rights challenges mentioned in this report.

Amnesty International welcomes the new Constitution; however is concerned about the Bill of Rights which does not sufficiently guarantee all rights. Some key ratifications also remain outstanding, including the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Optional Protocols to the Convention on the Rights of the Child.

Amnesty International also raises concerns about restrictions on the rights to freedom of expression, association and peaceful assembly, discrimination and violence towards the Tonga ethnic group, imprisonment of political opponents, excessive the use of force by the police and impunity for such violations.

FOLLOW UP TO THE PREVIOUS REVIEW

During its UPR in 2012, Zambia received a total of 125 recommendations of which it accepted 91 recommendations and rejected (noted) 34 recommendations.¹ While Amnesty International notes that Zambia expressed commitment to ensure that the rights to freedom of expression and peaceful assembly are upheld and to respect the 2003 Supreme Court ruling stating that these freedoms are fundamental,² the organization is concerned that these rights continue to be restricted, including through the use of libel laws and the Public Order Act. The government has stepped up attacks on independent media outlets and journalists and is allowing attacks by political party cadres on independent media, despite accepting a recommendation to ensure full compliance with the right to freedom of expression and that journalists are able to carry out their work independently and without fear of prosecution.³

Zambia also committed to extend an invitation to the Special Procedures.⁴ In April 2016, the Special Rapporteur on the rights of persons with disabilities visited Zambia. The Special

¹ Report of the Working Group of the Universal Periodic Review, Zambia, A/HRC/22/13 and the Addendum, A/HRC/22/13/Add.1, including the matrices.

² A/HRC/22/13, recommendation 102.44 (United States of America).

³ A/HRC/22/2, recommendation 103.52 (Ireland).

⁴ A/HRC/22/13, recommendation 102.19 (Iraq).

Rapporteur highlighted how people with albinism live in constant fear of being attacked and killed for their body parts, and also urged the authorities to protect women and girls with disabilities who are at heightened risk of sexual and gender-based violence.⁵ Amnesty International is concerned, however, that since 2015 at least 10 people with albinism have been killed in Zambia.

Amnesty International regrets that other recommendations to extend an invitation to the Special Rapporteurs on torture, on the independence of judges and lawyers, and on the right to health, were not accepted.⁶ In its State of Human Rights Report of 2015, Zambia Human Rights Commission expressed concerns at the rising use of torture, recording 131 cases of torture and other ill-treatment.⁷ The absence of legislation that criminalizes torture creates an atmosphere of impunity and lack of accountability.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

A new Constitution was approved on 5 January 2016, after being passed into law through Parliament. However, the Bill of Rights and Article 79 of the Constitution required amendment through a referendum. The new Bill of Rights, seen as comprehensive by civil society organizations and other stakeholders, was rejected at the referendum on 11 August 2016, leaving the country to revert back to the old Bill of Rights which does not include economic, social and cultural rights.

Amnesty International welcomes the new Constitution which contains some progressive provisions on non-discrimination, including the following definition: “discrimination means directly or indirectly treating a person differently on the basis of that person’s birth, race, sex, origin, colour, age, disability, religion, conscience, belief, culture, language, tribe, pregnancy, health, or marital, ethnic, social or economic status”. However, the draft Bill of Rights has been criticised by women’s rights advocates because of problematic clauses that could seriously undermine the human rights of women and girls in Zambia. Specifically, the draft Bill of Rights defines life as beginning at conception, which would gravely limit women’s access to abortion, thereby unnecessarily endangering many lives and restricting women’s right to bodily autonomy and reproductive health. The draft Bill of Rights also does not abolish the death penalty.

Zambia has yet to ratify some of the main international human rights treaties, in particular the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflict and on the sale of children, and on child prostitution and child pornography. However, Zambia enacted the

⁵ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, A/HRC/34/58/Add.2, page 18, paragraph 71.

⁶ A/HRC/22/13, recommendation 103.32 (Belarus).

⁷ State of Human Rights in Zambia 2015, Zambia Human Rights Commission, page 19

Ratification of International Agreements Act of 2016, which guides the process of ratifying international agreements and domestication of those agreements.

HUMAN RIGHTS SITUATION ON THE GROUND

RESTRICTIONS ON FREEDOM OF EXPRESSION, ASSOCIATION AND THE PRESS

The authorities continue to restrict the rights to freedom of expression and association in violation of international human rights standards and are intolerant of criticism. They have moved to stifle the freedom of the press, targeting journalists and perceived opponents of the state, including human rights defenders and activists who express dissent. In some instances, the authorities have labelled critics as a “substantive threat to national security” to persecute the media, journalists and others dissidents, and have raided their offices, arresting journalists and confiscating equipment.

Journalists at public and privately owned media outlets face intimidation, harassment and attacks by government and Patriotic Front supporters, especially for reporting on corruption cases. In September 2015, the Media Institute of Southern Africa-Zambia reported that a gunshot was fired into the offices of The Post newspaper, which often carries dissenting views. The proprietor of The Post, Fred M'membe, his wife, Mutinta Mazoka M'Membe, and reporters have faced a number of attacks from state authorities, including arrests and beatings by the police. On 20 June 2016, the tax authorities seized the printing presses of The Post and its operations shut down.

Attacks on community radios continue to take place. In August 2015, a government minister ordered the dissolution of a community radio board, alleging that it was biased towards the United Party for National Development.

On 22 August 2016, the Zambian Independent Broadcasting Authority suspended the licences of three independent broadcasters – Muvi TV, Komboni Radio and Radio Itezhi. Four Muvi TV media workers, John Nyendwa, Mubanga Katyeka, Joe Musakanya and William Mwenge, were arrested and charged with criminal trespass. The licences were subsequently reinstated. Despite the reinstatement of Komboni Radio's licence, on 5 October 2016 the station's director, Lesa Kasoma Nyirenda, was beaten by six armed police who prevented her from entering the premises. She was also charged with assaulting a police officer.

The government remains intolerant of criticism and responds by using criminal defamation laws. On 21 March 2016, Eric Chanda, leader of the Fourth Revolution political party, was arrested and charged with defaming the President in 2015. Two journalists working for The Post were also arrested on 7 April 2016 and charged with defaming President Lungu in relation to a quote by Eric Chanda. The Post's managing editor Joan Chirwa Ngoma and reporter Mukosha Funga were charged over an article published on 9 May 2015, which quoted Eric Chanda accusing President Lungu of using taxpayers' money to “drink, socialize and play pool”. The two journalists were later released on K20,000 (equivalent to USD20) bail each.

The authorities have also clamped down on political activists and others calling for the independence of Barotseland from Zambia, in the context of an unresolved dispute dating back to independence in 1964, over the status of the former Barotseland Protectorate in Western Province. In March 2016, three Barotseland activists who had been advocating for Barotseland's independence from Zambia were sentenced to 10 years in jail.

During the pre- and post-election periods in 2016, Amnesty International documented the arrest of hundreds of political activists, particularly those linked to the United Party for National Development. To Amnesty International's knowledge, five political activists remain in custody since August 2016.

Despite constitutional provisions guaranteeing the right to freedom of association, the NGO Act of 2009 continues to interfere with the ability of NGOs to operate independently and freely without undue interference. Since 2009, NGOs have been required to register every five years. Civil society organizations have criticized the length of the registration process, and the approval at the discretion of the registrar.

FREEDOM OF PEACEFUL ASSEMBLY, USE OF FORCE AND IMPUNITY

The police continue to implement the 1955 Public Order Act in a selective manner, which restricts the right to freedom of assembly of opposition parties and civic society organizations. Section 54 of the Public Order Act provides that anyone who intends to assemble or convene a public meeting, procession or demonstration must give the police seven days' notice. The law does not require formal approval by the authorities for such assemblies; however, the police interpret this provision to mean that permission is required before any public assembly can proceed.

Peaceful assemblies organized by political parties or civil society organizations and activists are often banned or dispersed by the police using excessive force; however, those responsible for using excessive force are rarely held to account.

During the election campaign in July 2016, police shot and killed Mapenzi Chibulo, an opposition United Party for National Development supporter, when the security forces clashed with a group of opposition supporters protesting the cancellation of a planned UPND rally in Lusaka.

On 6 October 2016, police arrested UPND President Hakainde Hichilema and Vice President Mwamba on charges of sedition and unlawful assembly. The men were accused of holding an unauthorized political rally and encouraging the crowd to reject the legitimacy of President Lungu's re-election. Hichilema and Mwamba were released on 7 October after posting bail.⁸

THE DEATH PENALTY

During its last UPR, Zambia rejected recommendations to abolish the death penalty in line with the de facto moratorium on executions, which has been in place since 1997.⁹ The country has been abolitionist in practice since 1997.

In 2015, President Lungu, commuted 332 death sentences after witnessing the harsh prison conditions in which inmates on death row were held.¹⁰ Amnesty International is concerned,

⁸ Amnesty International Website, <https://www.amnesty.org/en/latest/research/2017/02/amnesty-international-annual-report-201617/>

⁹ A/HRC/22/13, recommendation 103.40 (Spain).

¹⁰ Amnesty International website, <https://www.amnesty.org/en/latest/news/2015/07/zambia-commuting-death-sentences-a-laudable-first-step/>

however, that despite the significant reduction of death row inmates in 2015, the courts continue to impose death sentences. At the end of 2016, 101 inmates were under sentence of death.

ADVOCACY OF HATRED

Zambia is a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which mandates states to prohibit and bring an end, by all appropriate means, to racial discrimination by any persons, group or organisation. Despite the broader provisions on discrimination in the new Constitution, the authorities have allowed politicians to incite hatred causing discrimination and demonization of the Tonga ethnic group, based in southern province of Zambia.

During the run-up to the 2016 elections, the authorities did not clamp down on the use of hateful rhetoric, mostly quoted on social media, inciting hatred, discrimination and violence towards the Tonga ethnic group. Senior state officials made some derogatory remarks against the Tonga, in particular against opposition party activists from that tribal group. Under ICERD, Zambia has an obligation to “prohibit and bring to an end, by all appropriate means, including legislation...racial discrimination by any persons, group or organisation”. There have been reports of people being forcibly retired, demoted or transferred from urban to rural areas because they are Tonga. All persons in Zambia, whatever their ethnic background, have the right to protection of the law and to be treated equally and with dignity.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF ZAMBIA TO:

THE NATIONAL HUMAN RIGHTS NETWORK

- Urgently develop a roadmap to widen the Bill of Rights to ensure it guarantees civil and political as well as economic, social and cultural rights.

RESTRICTIONS ON FREEDOM OF EXPRESSION, ASSOCIATION AND THE PRESS

- Investigate reports of harassment, intimidation and arbitrary arrest of persons expressing dissenting views, in particular threats and attacks against *The Post* and *The Mast* newspapers and their reporters;
- Invite the UN Special Rapporteur on freedom of expression and the Special Rapporteur on torture to visit Zambia;
- Issue a standing invitation to all UN Special Procedures;
- Immediately and unconditionally release all prisoners of conscience deprived of their liberty solely for peacefully exercising their right to freedom of expression;
- Enact the access to information bill.

FREEDOM OF ASSEMBLY, USE OF FORCE AND IMPUNITY

- Promptly and thoroughly investigate the death of UPND supporter Mapenzi Chibulo, and hold those suspected to be responsible to justice in a fair trial;

- Prohibit the deployment of live ammunition in public order or crowd control situation in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Repeal or amend laws violating the rights to freedom of assembly and association, in particular the Public Order Act and the criminal defamation clauses in the Penal Code, and ensure their alignment with international standards, in particular the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, to which Zambia is a state party;
- Ensure the non-recurrence of human rights violations by state security, in particular the Zambia Police Service, through undertaking a programme of institutional and other reform to ensure respect for the rule of law and foster respect for human rights.

THE DEATH PENALTY

- Establish an official moratorium on execution with a view towards abolishing the death penalty;
- Review all death penalty cases with a view to commuting all death sentences to terms of imprisonment;
- Ratify without reservations the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

HATE CRIMES

- Investigate cases of ethnically or racially motivated violence and hate crimes in particular against the Tonga ethnic group and ensure that all cases are effectively investigated and those suspected to be responsible are brought to justice;
- Ensure that members of the Tonga ethnic group and other vulnerable groups are protected from violence and hate crimes;
- Ensure victims of hate crimes have effective access to justice and redress, including through providing appropriate support and assistance at each stage of the criminal justice process;
- Develop an action plan to combat and prevent hate crimes and hold accountable those suspected to be responsible for inciting discrimination and violence, including public officials.

PRISON CONDITIONS

- Develop and implement a strategy to that facilitates the quick transformation from prison services to correctional facilities;
- Review and amend the law that governs on bail and bond making by the courts and police officers and ensure that Zambia upholds the principle of presumption of innocence and does not deprived detainees their personal liberty;
- Ensure that all persons deprived of liberty are held in humane conditions, including in line with the UN Basic Principles for the Treatment of Prisoners and the Standard Minimum Rules for the Treatment of Prisoners and the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

HUMAN RIGHTS COMMISSION

- Adopt measures to guarantee adequate financial, material and technical resources to the Zambian Human Rights Commissions in order to effectively monitor, document and publicly report on the human rights situation in the country.

RIGHTS OF PERSONS WITH DISABILITY

- Implement recommendations of the report made by Special Rapporteur on the rights of persons with disabilities on her visit to Zambia;
- Submit all pending reports to the Committee on the Rights of Persons with Disabilities

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹¹

Zambia: Further information: Zambian court to rule on “unnatural sex” case (Index: AFR 63/001/2014), February 2014.

Zambia: Further information: Zambian court postpones ruling on gay case (Index number: AFR 63/002/2014) June 2014

Zambia: Further information: Court acquits two men in Zambia (Index number: AFR 63/003/2014) July 2014

Zambia: Closure of independent newspaper a ploy to crackdown on freedom of the press. June 2016

Zambia: Detained opposition leader accused of treason: Hakainde Hichilema (Index number: AFR 63/6061/2017) April 2017

Zambia: Opposition leader held in inhumane conditions: Hakainde Hichilema (Index number: AFR 63/6504/2017) June 2017

¹¹ All these documents are available on Amnesty International’s website:
<https://www.amnesty.org/en/countries/africa/zambia/>

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