

## ZAMBIA

### CCPR A/43/40 (1988)

89. The Committee considered the initial report of Zambia (CCPR/C/36/Add.3) at its 772<sup>nd</sup>, 773<sup>rd</sup> and 776<sup>th</sup> meetings held on 4 and 6 November 1987 (CCPR/C/SR.772, SR.773 and SR.776).

90. The report was introduced by the representative of the State party who pointed out that his country had made provision in its Constitution and other statutes for the enjoyment of basic human rights by all its people and had ratified the most important instruments in the field of human rights.

91. In the report, an attempt had been made to highlight the provisions of the Constitution and other legislation that related to various human rights. Its brevity did not mean that the Government attached little importance to human rights. Indeed, Zambia's stand - which held that human rights must be safeguarded in such a way that all people, whatever their race or nationality, were treated with dignity and respect - was known to the whole world. Despite the very difficult position it occupied in southern Africa, Zambia was making every effort to comply with the terms of international human rights instruments.

92. Members of the Committee expressed appreciation of Zambia's readiness to submit its initial report despite the numerous serious problems it was facing. While the report itself was far too brief and did not conform to the Committee's guidelines, its submission was clearly a positive step which indicated that the provisions of the Covenant would not remain a dead letter in Zambia.

93. With regard to article 2 of the Covenant, members of the Committee wished to know what the legal status of the Covenant was in Zambia, how any eventual conflict between the Covenant and domestic legislation would be resolved, whether a legal remedy could be sought on the basis of an alleged violation of a provision of the Covenant not recognized under existing domestic law and whether the provisions of the Covenant had ever actually been invoked by individuals or by the courts. Members also wished to know what steps had been taken to disseminate information about the rights guaranteed under the Covenant, whether the people of Zambia were aware of their fundamental rights stemming from the Covenant and whether such rights were taught in the schools and to law enforcement and prison officials.

94. More generally, several members noted that the rights guaranteed under article 13 of the Constitution appeared to be subject to an unlimited degree of restriction as a result of article 4 of the Constitution, which established the United National Independence Party as the sole legal political party in Zambia. They considered, accordingly, that a great deal of additional information about Zambia's legal and political system would be needed before it would be possible to assess the extent to which its laws and practices were consistent with the Covenant.

95. With reference to article 3 of the Covenant, members requested information regarding the factual status of women in Zambia, such as statistics concerning the proportion of women to men

in educational institutions, the civil service, Parliament and private employment - especially at the management level and the degree to which women enjoyed equality in everyday life. It was also asked whether the principle of equal rights was fully implemented in the case of divorce and whether any measures of affirmative action had been introduced in favour of women to improve their condition.

96. In connection with article 4 of the Covenant, members of the Committee requested clarification of the extent to which article 26 of the Constitution authorized derogations from fundamental rights and freedoms during periods of emergency and wished to know specifically whether permissible derogations under that article included any rights listed in article 4, paragraph 2, of the Covenant. Members pointed out that States parties were obliged, under article 4, paragraph 3, of the Covenant to give notice of any derogations from their obligations under the Covenant during a public emergency and that a number of political opponents had been arrested and detained without trial since 1986. They therefore wished to know whether a state of emergency had actually been proclaimed in Zambia and, if so, whether and to what extent there had been derogations from obligations under the Covenant. It was also asked whether the remedy of habeas corpus could be removed during a state of emergency.

97. Regarding article 6 of the Covenant, members wished to receive information concerning the death penalty, particularly the nature of the offences punishable by the death penalty, the number of death sentences imposed over the past three years, the number of such sentences actually carried out, the number of persons awaiting execution and the length of time that they had been waiting. Information was also requested regarding infant mortality statistics and about measures taken to reduce infant mortality as well as exposure of the population to epidemics. It was also asked what measures had been taken to control the use of firearms.

98. With reference to article 7 of the Covenant, members of the Committee wished to know whether instructions with regard to the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials were given to police and military personnel, what procedures existed for prompt and impartial investigation of any allegations of torture and redress for the victims and whether any police officers had been charged with such offences and, if so, in how many cases they had been found guilty and punished. Members also asked how allegations of torture or ill-treatment, such as those relating to the case of seven foreigners who had been arrested in northern Zambia in July 1986, were investigated and how and in what form the findings of such investigations had been made public. Noting that article 17, paragraph 2, of the Constitution did not appear to provide protection against torture or inhuman treatment under laws enacted prior to the entry into force of the Constitution and that, as such, the provision seemed to be incompatible with article 7 of the Covenant, one member asked whether the Government of Zambia intended to bring its legislation into conformity with the Covenant. Another member, also referring to article 17 of the Constitution, wished to know what machinery had been established to give that article effect and how fully the rights enumerated therein were actually protected.

99. With regard to article 8 of the Covenant, it was asked whether articles 40 and 41 of the Zambian Rules of Public Order, under which public service employees could be forced in certain circumstances to remain in their jobs against their will, had actually been repealed as the Government had promised.

100. In connection with article 9 of the Covenant, members of the Committee requested information on the duration of pre-trial detention and appeals procedures, including procedures that might be available during a state of emergency. In that regard, one member wondered how, when, and in what context special procedures, such as habeas corpus, were applied and whether a law could be appealed on grounds of unconstitutionality. Members also requested clarification of certain preservation of public security regulations - under which the President was empowered to detain persons for definite or indefinite periods - as well as of article 27, paragraph 4, of the Constitution, which appeared to deprive detainees of adequate legal assistance.

101. With reference to article 10 of the Covenant, members requested information about prison conditions in Zambia, particularly with respect to the separation of juveniles from adults, men from women and convicted prisoners from persons awaiting trial, and about measures being taken to rehabilitate former convicts. One member requested clarification of article 15, paragraph 1 (c), of the Constitution which, in his view, appeared to be in conflict with article 19 of the Covenant.

102. Regarding article 12 of the Covenant, members of the Committee requested information about regulations covering the issuance of passports and more generally about the right to leave one's country, which did not seem to be provided for under article 24 of the Constitution. Clarification was also requested of an apparent conflict between article 12, paragraph 3, of the Covenant and article 26, paragraph 3 (b), of the Constitution, since the latter placed no limitations on restrictions that could be imposed on the freedom of movement of aliens.

103. Concerning article 13 of the Covenant, members asked how many South African, Namibian and Sudanese refugees there were in Zambia and whether their presence had caused any problems. Members also wished to receive information about the position in Zambia of aliens other than refugees, including the procedures relating to their expulsion. It was asked, in the latter connection, whether an alien could lodge an appeal against a deportation order and whether such an appeal had suspensive effect.

104. With reference to article 14 of the Covenant, members of the Committee requested additional information on how the principle of equality before the law and the competence and independence of the courts and of judges were assured under the Zambian legal system. In the latter regard, more information was requested about the conditions relating to the appointment and removal of judges and magistrates as well as the heavy influence of the executive on the Judicial Service Commission, which dealt with the appointment, transfer and discipline of judges. Members also wished to know whether special courts - especially military courts - existed and what the extent of their competence was, what languages were used in the courts, how long the legal delays actually encountered in practice were and whether the possibility of an appeal existed in all criminal cases, in conformity with the Covenant.

105. Concerning article 15 of the Covenant, it was asked whether there were any laws or regulations under which persons could be prosecuted for an offence which did not constitute an offence at the time it was committed.

106. Concerning article 17 of the Covenant, one member, observing that article 19 of the Constitution did not clearly indicate the limits of authorized interference with privacy, requested

detailed information in that regard.

107. In connection with article 19 of the Covenant, members requested information on the nature, control or ownership of newspapers, radio and television and the opportunities open to the people to obtain information, the existence of pre-publication or post-publication censorship, the possibilities for lawful restrictions, if any, applicable to foreign correspondents. Several members were of the view that article 4 of the Constitution and article 19 of the Covenant might not be fully compatible, particularly in respect of freedom of opinion, and asked for additional clarification. It was also asked whether anyone had been arrested for his political opinions.

108. Regarding articles 21 and 22 of the Covenant, members of the Committee wished to know whether there were any restrictions on political or trade-union meetings or on the right to strike and whether individuals could join, or occupational groups form, trade unions.

109. In connection with article 25 of the Covenant, several members asked whether it was possible, in view of Zambia's one-party political system, to protect the right of citizens to take part in the conduct of public affairs, and to have access to public service, without distinctions based on political or other opinion. Information was also requested concerning the required qualifications for entry into the public service or Parliament.

110. With regard to article 27 of the Covenant, members of the Committee requested statistical data on the composition of the Zambian population. Members also wished to know whether there were any problems relating to the coexistence of various ethnic groups within Zambia and whether representation in the House of Chiefs was based on such considerations as membership of tribal, religious or linguistic groups.

111. Turning first to the broader concerns voiced by members of the Committee regarding Zambia's legal and political system, the representative of the State party recalled that Zambia had known no peace since gaining independence in 1964 owing to the unswerving support it had given to the liberation movements in Zimbabwe, Angola and Mozambique. The effects of the fierce armed struggle in these areas had spilled over into Zambia, which had become a target of aggression from Portuguese and Rhodesian forces and a host to thousands of refugees, some of whom were clearly agents sent to destabilize the country. Zambia currently had the highest concentration of African refugees from many countries, in addition to thousands of illegal alien residents.

112. Political stability had been further threatened by the establishment of tribal-based political parties, which were encouraged by South Africa for the purpose of creating chaos. In a country composed of 73 ethnic tribes in a population of 7 Million, such a threat was far from idle. Moreover, Zambia's economic situation had been deteriorating seriously owing to the economic sanctions that had been imposed by the international community against Rhodesia. It was against that background that the decision to mobilize the Zambian people in a single unit to promote development, and to declare a state of emergency, had been taken.

113. Despite the continuing state of crisis, fundamental human rights had been strictly respected as the corner-stone of Zambia's political philosophy. The institution of the one-party system was decidedly not incompatible with the enjoyment of civil and political rights. A reading of the Party's

constitution would show that it was open to criticism and change by decision of the majority. Furthermore, free elections, by secret ballot, had been held regularly every five years and at the last elections, in 1983, 760 candidates had contested 125 parliamentary seats.

114. In view of its problems, Zambia required stability above all else. Its one-party system had enabled the nation to maintain its political stability and its people had enjoyed a peace which would not have been possible otherwise. Indeed, in an extremely difficult situation, Zambia's political system had worked remarkably well and the prevailing atmosphere of stability had even served to attract nationals of many other countries.

115. In his reply to questions concerning the status of the Covenant, the representative explained that, in general, almost all the civil and political rights enshrined in the Covenant were covered by the Constitution of Zambia, the Penal Code, the Code of Criminal Procedure, the Immigration and Deportation Act, the Refugees Act and the High Court and Supreme Court Acts. It was those courts which had the responsibility for determining whether or not fundamental human rights had been infringed and for providing the appropriate remedy in individual cases.

116. The provisions of the Covenant did not automatically become part of Zambian legislation but Zambia did intend to take appropriate steps under article 2, paragraph 2, of the Covenant as to when the prevailing social, political and economic circumstances made it possible to do so. Although the introduction of some legislative changes would require lengthy consultations, Zambia had already started along the right path by taking the important step of ratifying the Covenant and submitting its initial report.

117. Regarding questions relating to non-discrimination and the status of women, the representative stated that his Government recognized that women performed a leading role in the nation's life and recalled that under article 13 of the Constitution women were placed on an equal footing with men. Women were participating to an increasing extent in Zambia's social, economic and political life, holding senior positions as members of the Central Committee, the Government and the judiciary (there were three women High Court judges), and in the business world and the legal, medical and other professions. While women in rural areas continued to play their traditional roles enshrined in custom, the Government had made great efforts to improve their status. One example of the Government's determination to redress imbalances between men and women dating from the past was the policy decision to admit girls to State secondary schools with lower marks than boys.

118. Women enjoyed the same working conditions as men employed in similar jobs and had the same access to loan facilities. Even if unmarried, they were entitled to paid maternity leave. Under the terms of the Law Reform (Miscellaneous Provisions) Act, women were entitled to enter into contracts and to sue and be sued in their own name, to marry freely, to divorce, and to vote and contest elections. African customary law was recognized and enforced to the extent that its principles were consistent with written laws or principles of natural justice.

119. With reference to questions raised by members of the Committee concerning article 4 of the Covenant, the representative of the State party confirmed that a state of emergency, which had been proclaimed and published in the Government Gazette, was still in effect. He pointed out, however, that certain rights, such as the right to life, freedom from slavery and forced labour, freedom from

inhuman treatment and the right to protection of the law could not be derogated from even in times of emergency. The only rights that could be derogated from were the rights to personal liberty, protection from deprivation of property, privacy of the home, freedom of expression, assembly and association, freedom of movement and protection from discrimination. In actual fact, few laws removing liberties had been enacted and most alleged violations, according to law reports, related to freedom of movement.

120. An individual could successfully challenge the deprivation of such rights in the High Court if he could show that the measures taken exceeded action which could be justified by the circumstances prevailing at the time. In the case of some appeals, the courts had ruled against the State and the persons involved had been released and even awarded damages.

121. Replying to questions relating to the right to life, the representative of the State party stressed that Zambia abhorred the taking of life and the Party and Government were deeply concerned about the quality of life of every citizen. Among various health measures that had been taken, he drew attention to the establishment throughout the country of a network of hospitals, health centres and clinics, the launching of a primary health care programme to ensure that children were immunized and that mothers were taught about nutrition, the initiation of various programmes to deal with epidemics and the broadcasting in various local languages of numerous health-related information programmes on the national radio.

122. The death penalty was mandatory for murder and treason and for aggravated robbery where the use of a firearm or other offensive weapon caused grievous bodily harm. However, the death penalty could not be passed on a person who was under 18 years of age at the time of the commission of the offence. Persons convicted under that age would not be executed once they reached the age of 18 years but detained at the President's pleasure under specified conditions. The death penalty could not be carried out on a pregnant woman. The sentence in such a case became one of life imprisonment. Every effort was being made to reduce undue delays in executing death sentences but the procedures for clemency required some time. The use of firearms by law enforcement officers was authorized only in exceptional circumstances and as a general rule the police did not carry firearms.

123. Responding to questions raised under article 7 of the Covenant, the representative noted that inhumane treatment was contrary to Zambia's philosophy of humanism and that torture was unlawful. Allegations of torture, particularly of persons being held in custody, had been investigated and court-ordered medical examinations had been conducted. Some police officers accused of assaulting suspects had been tried and convicted. Statements obtained under duress were not admissible in court and whenever such coercion was alleged in open court, proceedings were held to determine whether the alleged confession had been made voluntarily.

124. The representative rejected the allegations of torture by some foreigners who had been arrested as false and defamatory. Some of the individuals involved had been found in compromising circumstances while others had been sent into the country to masquerade as tourists in order to carry out subversive acts. In a number of such cases, the relevant accredited missions had admitted publicly that their nationals had been treated humanely while in custody. Victims of alleged mistreatment by the police could file charges privately in cases where the police authorities were

unwilling to prosecute the alleged offenders.

125. Turning to questions raised by members of the Committee relating to article 9 of the Covenant, the representative noted that, under article 20 of the Constitution, anyone charged with a criminal offence had to be informed of the charge, which must be in strict accordance with legislative provisions. Adequate opportunity was given for the preparation of a defence and, if the accused did not understand English, the Government made sure he had the assistance of an interpreter. The rights and privileges normally accorded to accused persons in democratic societies were provided for: an individual could testify in his own defence, call witnesses and cross-examine those called by the State and, if he declined to testify, his decision could not be used against him by the prosecution. The prosecution was conducted by the Director of Public Prosecutions, and independent official assisted by qualified legal experts and, in some cases, by members of the police force.

126. The representative acknowledged that there were occasions when the judicial process was not as rapid as it should be, but everything possible was done, within existing resource limitations, to improve the situation. As provided in the Protection of Fundamental Human Rights Rules, adopted in 1969, individual complainants could file petitions for redress to the High Court. In cases of complaints against the State, a copy of the petition had to be served on the Attorney-General. The relevant legislation did not list specific remedies, but a petitioner was free to suggest desired remedies which, if the court saw fit, were awarded.

127. Preventive detention was implemented in accordance with the Constitution and laws of Zambia. Resort to that measure, which was recognized as not being an ideal one, was necessary at times in view of the existing serious threats to the nation's security. Detained persons were informed of the reasons for the detention within 14 days, the fact of the detention was published in the Government Gazette within one month, and cases of detention were reviewed periodically - in some instances long before the one-year period specified in the Constitution had elapsed.

128. Regarding prison conditions, the representative explained that, pursuant to section 60 of the Prisons Act, prisoners were separated according to sex. Juveniles were not held in the same prisons as adults. The Government was greatly concerned about the inadequacy of prison conditions and was interested in developing alternatives to imprisonment. Unfortunately, in view of the country's limited financial resources, it had not yet been possible to create the rehabilitation facilities and programmes needed.

129. Responding to questions relating to the right to freedom of movement, the representative agreed that the Constitution did not provide for the right to leave the country, but stated that, in fact, Zambian citizens were free to leave the country if they wished to. Those desiring to travel abroad were issued with passports, but the Government reserved the right to revoke a passport if its bearer committed a crime or defaulted on financial obligations while abroad.

130. While law-abiding foreigners were welcome in Zambia, the country was beset by thousands of illegal entrants who held false passports and who had come primarily to plunder the country's resources, particularly precious stones and minerals. This had made it necessary for the Government to carry out periodic checks and to deport those who were found to be in the country illegally.

Procedures relating to the deportation of aliens were set out in sections 22 and 24 of the Immigration and Deportation Act. Deportees were given fair treatment and no country to which aliens had been deported had had cause for complaint.

131. Regarding the position of aliens, the representative said that Zambia's large and multinational population of aliens enjoyed the same rights as citizens, were entitled to work permits, were tried for any offences in the same courts as citizens and were free to observe their own customs, traditions and religions.

132. Turning to the questions raised by members of the Committee concerning article 14 of the Covenant, the representative of the State party explained that Zambia's hierarchical judicial system was headed by the Supreme Court, which served as the final court of appeal. The Court was composed of the Chief Justice, the Deputy Chief Justice and three Supreme Court judges - all of whom had to be highly qualified and experienced lawyers. Immediately below the Supreme Court was the High Court, composed of the Chief Justice and 12 puisne judges. That court had unlimited original jurisdiction for both criminal and civil proceedings, was responsible for supervising proceedings before magistrates' courts, and had jurisdiction concerning human rights-related complaints treated by subordinate courts. When so requested by the parties concerned, the lower courts were required to refer any human rights case to the High Court. Next in order were the magistrates' courts, which were presided over by magistrates who had received legal training and which had limited civil and criminal powers as defined in the Subordinate Courts Act, the Penal Code and the Code of Criminal Procedure. Local or traditional courts were inferior to the magistrates' courts and had only limited civil powers relating mainly to such matters coming under customary law as divorce and inheritance. Under a reform introduced by the Judicial Service Commission, local magistrates now had to be literate and to have a good working knowledge of English.

133. There was a magistrates' court in every district in Zambia and the High Court went on circuit at regular intervals. The Government's ultimate aim, as funds became available, was to station a High Court judge in every provincial capital.

134. The Constitution provided a number of safeguards of judicial independence. For example, the number of Supreme or High Court judges could not be reduced while such posts were occupied nor could such judges be dismissed except for incapacity or misbehaviour, as determined by a special three-man judicial tribunal. Article 113 (5) of the Constitution provided that the findings of such a tribunal were binding upon the President. The judiciary was satisfied with the composition of the Judicial Service Commission, particularly since the Constitution prescribed that only legally qualified persons could be appointed to judicial office.

135. All decisions were appealable through the hierarchy, from local courts to the Supreme Court. The courts were available to all persons without discrimination and there were no military tribunals. Proceedings were open to the public. Article 20 of the Constitution set out the rules for due process which corresponded to the provisions of article 14 of the Covenant. In all courts, interpretation facilities were available and, in serious criminal cases, limited legal aid was provided. The Zambian Bar Association had recently instituted a system to supplement such legal aid. The same standard - that of proof beyond reasonable doubt - was applied in Zambia as in other common-law countries.



136. Responding to questions relating to article 19 of the Covenant, the representative stated that the press in Zambia was both free and very lively. Foreign visitors had often been struck by the stinging editorial comments in the Times of Zambia and the Zambian Daily Mail, and the letters published by those newspaper criticizing the Governments' operations. There were two other daily newspapers - the National Mirror and the Mining Mirror - which were published, respectively, by a religious organization and by Zambia Consolidated Copper Mines, Ltd. A number of provincial papers were published in various local languages by Zambia Information Services, which was a government organization. No newspaper had ever failed to appear because of government censorship. Radio and television were State-owned. Frequent panel discussions programmes provided for a wide range of views on Zambian issues. There was no ban on the receipt or purchase of foreign newspapers and magazines, although economic constraints had made it difficult for booksellers and news agents to procure them and, even when available, their prices were beyond the means of most Zambians.

137. In addition to being able to read whatever they liked, whether of foreign or domestic provenance, Zambians were free to express themselves both in private and in public.

138. Turning to the questions that had been raised in connection with article 22, the representative of the State party said that the trade-union movement in Zambia dated back to the period before independence and it was accepted that the participation of trade unions in the industrial and social development process was the essence of democracy. The right to form or join trade unions was mentioned in article 23 of the Constitution, while the Industrial Relations Act described that right in detail and explained how unions could be formed and run. The Act enjoined employers not to deter employees from participating in trade-union activities or penalize them for exercising union rights and also provided for the withholding by employers of union dues from the wages of union members and the transmittal of such funds directly to the trade union concerned.

139. Union leaders had frequently used their positions to voice concern on matters affecting the community at large. The Government itself had often consulted the unions. The Congress of trade Unions, to which all unions were affiliated, was represented at meetings of the National Council and the General Conference of the United National Independence Party. Trade union officials were chosen in free elections, without Government involvement.

140. In his reply to questions concerning article 25 of the Covenant, the representative pointed out that both presidential and parliamentary elections were held every five years. Voting was by secret ballot and all citizens, whether members of the party or not, were eligible to vote. Presidential and parliamentary elections would next be held in 1988 and the registration of electors was currently under way. There was no requirement that civil servants should belong to the party.

141. With reference to a question raised by a member of the Committee regarding article 27 of the Covenant, the representative explained that the House of Chiefs was essentially an advisory body in which every province was represented, although not on a strictly proportional basis. Members of the House of Chiefs provided information about grass-roots-level problems of relevance to matters under consideration by the Government.

142. In conclusion, the representative of the State party expressed regret that time constraints had

made it impossible for him to inform the Committee of certain statutes and court decisions relating to some of the points that had been raised which could have more fully illustrated the situation in the country. However, by their questions, members of the Committee had made it easier for his delegation to plan ahead and compile a more detailed second periodic report. He was confident that that report would be more complete and contain indications of progress made in implementing the rights contained in the Covenant.

143. Members of the Committee thanked the representative for his candid answers, which had given the Committee a clearer idea of the factors and difficulties relating to the implementation of the Covenant in Zambia. They also expressed gratification that he had accepted the Committee's procedure as reflecting its desire for dialogue rather than confrontation. Although a number of questions had remained unanswered members were confident that the second periodic report would contain the required responses.

144. In concluding the consideration of Zambia's initial report, the Chairman thanked the representative of the State party for having participated in a fruitful dialogue with the Committee and expressed the hope that a more detailed report would be provided to the Committee in 1990.

## **CCPR A/51/40 (1996)**

187. The Committee considered the second periodic report of Zambia (CCPR/C/63/Add.3 and HRI/CORE/1/Add.22/Rev.1) at its 1487<sup>th</sup> to 1489<sup>th</sup> meetings (fifty-sixth session), on 26 and 27 March 1996, and at its 1498<sup>th</sup> meeting, on 3 April 1996, adopted the following comments.

### Introduction

188. The Committee welcomes the submission of the second periodic report by Zambia and expresses its appreciation to the State party for the resumption of a constructive dialogue with the Committee. The Committee regrets, however, that although the report provides information on general legislative norms in Zambia, it largely fails to deal with the actual state of implementation of the Covenant in practice and the difficulties encountered in the course of implementation. The Committee appreciates the presence of a delegation which provided helpful information to it in response to its questions and thus allowed it to obtain a somewhat clearer view of the overall situation in the State party. Unfortunately, the delegation did not include experts on all the issues dealt with in the report or on issues usually raised by the Committee during the consideration of the reports of States parties.

### Factors and difficulties affecting the implementation of the Covenant

189. The remnants of certain traditions and customs constitute an obstacle to the effective implementation of the Covenant, particularly with regard to equality between men and women.

### Positive aspects

190. The Committee recognizes that the State party has begun amending its domestic legislation to bring it into line with the Covenant.

191. The Committee welcomes the introduction of a multi-party system of government, as well as efforts undertaken by the State party to strengthen democratic institutions and the multi-party system. In that regard, it takes note of the establishment of a commission to review the Constitution and of the adoption of measures designed to strengthen the rule of law. It further welcomes the setting up of the Munyama Human Rights Commission.

192. The Committee appreciates the efforts made by the Government to implement views adopted by the Committee under the Optional Protocol.

### Principal subjects of concern

193. The Committee notes with concern that steps still remain to be taken to harmonize the Constitution with the Covenant and to develop democratic institutions and human rights machinery for better implementation of the Covenant.

194. The Committee also notes with concern that the equality clause in section 11 of the

Constitution and the non-discrimination clause in section 23 do not apply to non-citizens and that there are other exemptions in section 23 which are not compatible with articles 3 and 26 of the Covenant.

195. The Committee expresses its concern over the situation of women who, despite some advances, continue to be de jure and de facto the object of discrimination, particularly as regards education, access to work and participation in the conduct of public affairs. The application of customary laws in matters of personal status, marriage, divorce and inheritance rights reinforces outdated attitudes concerning the role and status of women. The Committee also regrets the lack of measures to adequately address problems raised with regard to violence against women and the high maternal mortality rate resulting from abortion.

196. Section 43 of the Constitution, which restricts the right of individuals to pursue civil remedies in the courts against the President for anything done in his private capacity, is incompatible with the provisions of article 14 of the Covenant.

197. The Committee regrets that the proclamation of a state of emergency in March 1993 was not communicated to the Secretary-General of the United Nations in accordance with article 4, paragraph 3, of the Covenant. The Committee also regrets the lack of clarity of the legal provisions governing the introduction and administration of a state of emergency, particularly sections 31 and 32 of the Constitution, which would permit derogations contravening the State party's obligations under article 4, paragraph 2, of the Covenant. The Committee is also concerned that the derogation of rights permissible under section 25 of the Constitution goes far beyond that permissible under article 4, paragraph 2, of the Covenant.

198. The Committee is concerned that the rights contained in articles 7, 9 and 10 of the Covenant are not fully respected. It is concerned in particular that torture and ill-treatment of persons deprived of their liberty continue to be reported and that abuses allegedly committed by police officers and members of the security forces are not duly investigated by an independent body.

199. The Committee welcomes the establishment of the National Committee on Penal Reform but is greatly concerned at the poor condition in places of detention and the lack of implementation of the guarantees contained in article 10 of the Covenant as well as in the United Nations Standard Minimum Rules for the Treatment of Prisoners.

200. The Committee is concerned that three journalists were found to be "gross contempt of the National Assembly" without any of the procedural guarantees of fair trial provided for by articles 9 and 14 of the Covenant and that two of those journalists were held in indefinite detention before release, contrary to the provisions of article 9 of the Covenant and even contrary to section 13 of the Constitution and sections 27 and 28 (3) of the National Assembly (Powers and Privileges) Act.

201. The Committee is also concerned about reports of arrests and charges against journalists for the publication of newspaper articles. Use of the criminal process to ensure accountability of the press for the veracity of its reports is not compatible with article 19 of the Covenant. Robust and even harsh criticism of government figures is an essential part of free speech in a democratic country.

202. The Committee is concerned that the proposals made by the Constitutional Review Committee in regard to appointment of judges of the Supreme Court by the President after their retirement and the removal of Supreme Court judges by the President, subject only to ratification by the National Assembly without any safeguard or inquiry by an independent judicial tribunal, are incompatible with the independence of the judiciary and run counter to article 14 of the Covenant.

203. The Committee is also concerned that no measures are taken to ensure that pregnancy or parenthood does not affect the continuous education of children.

204. The requirement to sing the national anthem and salute the flag as a condition of attending a State school, despite conscientious objection, appears to be an unreasonable requirement and to be incompatible with articles 18 and 24 of the Covenant.

205. The Committee is further concerned that provisions in the Penal Code which fix eight years as the age of criminal responsibility and which permit children to be charged jointly with adults to be tried in the ordinary criminal courts appear to be incompatible with article 14, paragraph 4, and article 24 of the Covenant.

#### Suggestions and recommendations

206. The Committee strongly encourages the Government to undertake a thorough review of the legal framework for the protection of human rights in the State party to ensure full conformity with the Covenant. It recommends that appropriate institutions be set up to promote the observance of human rights.

207. The Committee recommends that the State party review its laws and make appropriate amendments, including the abrogation of subsections 23 (4) (c) and (d) of the Constitution, to ensure full legal and de facto equality for women in all aspects of social and economic relationships and particularly in the laws governing the status of women, women's rights and obligations in marriage. It emphasizes the need for the authorities to increase efforts to prevent and eliminate persisting discriminatory attitudes and prejudices against women. Comprehensive anti-discriminatory laws covering both the private and the public spheres should be introduced, as well as, where appropriate, affirmative action measures.

208. The Committee recommends that the authorities adopt legislation to bring the domestic legal regime, including section 25 of the Constitution, into harmony with the State party's obligations under article 4 of the Covenant.

209. The Committee recommends that, in view of the current debate referred to in paragraph 18 of the report of the State party and the fact that there have been no executions since 1988, the State party consider taking measures for the abolition of the death penalty and the ratification of or accession to the Second Optional Protocol to the Covenant.

210. The Committee urges the authorities to take the necessary steps to ensure that torture, ill-treatment and illegal detention do not occur and that any such cases are duly investigated by an independent authority in order to bring before the courts those accused of having committed such

acts and to punish them if found guilty. The Committee also recommends that the report of the Munyama Human Rights Commission be published as soon as possible and that the State party move for the reform of penal law and practice.

211. The Committee recommends that steps be taken in law and in practice to implement fully the provisions of article 10 of the Covenant as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners, and to make relevant laws and regulations governing the treatment of persons deprived of their liberty known and accessible to the prisoners themselves, as well as the police, armed forces, prison personnel and other persons responsible for holding interrogation. Urgent steps should be taken to reduce the number of prisoners through the review of sentences, the speeding up of trials and other measures.

212. The Committee recommends the abolition of imprisonment for civil debt, in compliance with article 11 of the Covenant.

213. Corporal punishment should be abolished, in accordance with article 7 of the Covenant.

214. The Committee recommends that mere criticism by journalists of government officials should not be made a criminal offence.

215. The Committee welcomes the release under court order of two journalists who were detained after being found to be in contempt of the National Assembly. It trusts that the third journalist censured by Parliament will not be detained. It urges that in future all cases in which people are suspected of contempt of Parliament be dealt with by the courts in a manner consistent with all requirements of the Covenant.

216. The Committee calls upon the State party to prepare its third periodic report in compliance with the Committee's guidelines for the preparation of State party reports. The report should, in particular, include detailed information on the extent to which each right is enjoyed in practice, and refer to specific factors and difficulties that might impede its application. In undertaking this obligation, the State party may wish to avail itself of the advisory services and technical assistance programme of the United Nations Centre for Human Rights.