

Universal Periodic Review Submission - Zambia

March 2017

I. Summary

This submission highlights Human Rights Watch's concerns in Zambia, including developments in relation to the implementation of recommendations from Zambia's previous Universal Periodic Reviews (UPR) in 2012 and 2008. Zambia pledged to support several recommendations, including the goal to ensure the enjoyment of rights without any discrimination based on sex, race, disability, status or any other recognized ground.¹ While Zambia has taken steps to implement these obligations, Human Rights Watch calls attention to the inadequacies of the government's efforts to eliminate all discriminatory treatment towards vulnerable groups, in particular persons with disabilities, women, and LGBT groups. This submission focuses on the rights of people with disabilities and minorities, the impact of land deals on women, and accountability for war crimes.

II. People with Disabilities and HIV/AIDS

The government of Zambia has taken steps to prevent and treat HIV/AIDS and other sexually transmitted diseases. This includes initiatives to educate high-risk groups on the transmission of HIV/AIDS, as well as public sensitization measures through the media and information resources.² However, greater efforts should be made to ensure that these services and information are inclusive of and accessible for all people, including adults and children with disabilities. Zambia has ramped up efforts to implement recommendations regarding HIV services, such as the improved access to information and healthcare coverage for HIV/AIDS, but in order to fully implement their recommendations, Zambia must ensure people with disabilities also have equal access to HIV services and information.³

¹ Human Rights Council, Report of the Human Rights Council on its twenty-second session, A/HRC/22/2, August 27, 2013, paras. 677, 702 (advanced unedited version).

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-2_en.pdf (accessed March 16, 2017). *Recommendation 103.36 Take the necessary measures to eliminate all discriminatory treatment towards persons with disabilities including the ratification of OP-CERD.*

² Human Rights Council, Report of the Working Group on the Universal Periodic Review Zambia, A/HRC/22/13/Add.1, February 26, 2013, para. 21

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-13-Add-1_en.pdf (accessed March 10, 2017).

³ Human Rights Council, Report of the Human Rights Council on its twenty-second session, A/HRC/22/13, para. 102 *Recommendation 102.48 Continue to implement measures which allow all people to have access to health care service.*

Based on the findings of Human Rights Watch’s 2014 report “People With Disabilities Left Behind in HIV Response: Remove Barriers to HIV Education, Testing, and Treatment,”⁴ as well as recent updates from local organizations on the situation of persons with disabilities, we have found that while Zambia made strides in improving HIV prevention, people with disabilities are still at increased risk of HIV infection because of discrimination in schooling, poverty and greater risk of physical and sexual violence.⁵

In Zambia, where more than one in 10 adults are living with HIV, and a similar number of people are estimated to have a disability, the government should recognize people with disabilities as a key population within the national HIV response, who should be a priority for targeted action. Zambia’s efforts to combat the HIV/AIDS pandemic have included the implementation of a national strategic plan,⁶ with the development of the National Strategic Framework 2014-2016.⁷ Although the national policy recognizes disability as a key target, there has been no effort made to improve or implement the policy to ensure effective service provision, according to local disability organizations on the ground.⁸ A disability-inclusive approach to HIV policies and national strategic plans is critical for countries like Zambia, which remains at the epicenter of the HIV pandemic.

More needs to be done to draw broader attention to the needs of individuals with disabilities in HIV services, and to integrate HIV issues within all disability work. In order to accelerate the reduction of HIV prevalence in Zambia, the government should shift towards promoting universal access to HIV and AIDS services and programs for people with disabilities.

Recommendations:

- Implement targeted disability-specific HIV services, including HIV prevention education and information, condoms, testing, treatment and long term-support for adherence, as well as ensure accessibility of existing mainstream HIV services to persons with different type of disabilities;
- Make hospitals and health centers accessible for persons with disabilities including through ramps, accessible examination and counseling rooms and toilets, and the availability of sign-language interpreters;
- Ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities as recommended in the 2nd cycle of the UPR.⁹

⁴ Human Rights Watch, *People With Disabilities Left Behind in HIV Response: Remove Barriers to HIV Education, Testing, and Treatment*, July 2014 <https://www.hrw.org/news/2014/07/15/zambia-people-disabilities-left-behind-hiv-response>.

⁵ Ibid.

⁶ Human Rights Council, A/HRC/22/13 para. 102. *Recommendation 102.52. Pursue efforts to combat the HIV/AIDS pandemic, particularly by the implementation of a national strategic plan to fight against the pandemic.*

⁷ Republic of Zambia, “National HIV/AIDS Strategic Framework 2014-2016” 2014

<http://www.nac.org.zm/sites/default/files/publications/National%20AIDS%20Strategic%20Framework-%202014%20-2016.pdf> (accessed March 10, 2017).

⁸ Human Rights Watch email correspondence with Zambia Deaf Youth and Women, March 2, 2017.

⁹ Human Rights Council, A/HRC/22/2, Para. 702 (advanced unedited version). *Recommendation 103.4 Ratify OP to the CRPD.*

III. Women and Land

In 2016, Human Rights Watch researched the impact of large-scale agricultural land deals on rural communities, with especially disproportionate impacts on women. We documented cases of actual and impending forced evictions, and risks to related human rights to food, water, health, education, right to participate, and redress due to expanding commercial farming activities in Serenje district, Central province. In a few cases residents were forcibly evicted, where commercial farm owners or their employees used intimidation and threats of arrest to compel residents to move. Women described barriers to participation, including their fear of attending aggressive (potentially even violent) meetings relevant to their eviction.

Residents described how women were impacted differently compared to men, including by having to walk farther to gather water, firewood or other resources. Women also experienced hardships in managing limited access to food. Residents reported that their food reserves were meager due to reduced agricultural land for cultivation and restricted access to forests for foraging and grazing land due to expanding commercial farms. Many women told us life was more difficult because of loss of farm and non-farm income from sale of forest products such as roots, mushrooms, leaves, caterpillars and sometimes rats. In some families, adults and children had only one meal a day.

Many residents said commercial farmers forced them to move away from land they had lived on and farmed for more than a decade, with no compensation and in rare situations with compensation that did not reflect their loss of tangible (home, crops, trees) and intangible assets (social networks for childcare), even where the resettlement came after the 2016 National Resettlement Plan.

Most residents we spoke to said they were not involved in a resettlement or compensation decision-making process, if compensation was at all planned. Human Rights Watch found out that resettlement and compensation of residents found on land meant for commercial farming, was left up to the investor to determine who would be compensated, how, when, and what compensation would look like. Zambian authorities played a minimal role in resettlement and compensation discussions affecting local residents.

Even with a fairly recent national resettlement policy there is no clear structure to facilitate coordination and monitoring of resettlement and compensation activities. Zambia has a variety of laws relevant to large-scale agricultural investments, including laws on land, investment, agriculture, labor, and environmental protection. But laws such as the Lands Act (1995) have gaps that could result in human rights violations for rural communities, especially women. Zambian land laws as applied do not adequately protect security of tenure over lands commonly referred to as “customary lands,” where communities may have lived on and used land for generations but do not have formal title.

Government officials we interviewed had no idea who had been on the land allotted for commercial farming and for how long. Residents said that Zambian officials instructed them to negotiate on their own with commercial farmers/investors for compensation rather than actually facilitating meaningful consultation and ensure fair treatment of displaced families. Residents told us that they had reported their complaints to the District Commission (representative of the Office of the President) but they received very little help. In one case 12 families were taken to court by an investor when the families insisted on a good faith effort to generate the value of compensation received. The court ruled that

these families should be evicted and compensated ZMW 1000 (US\$100) per family, further eroding affected residents belief that they can seek redress.

In January, Parliament enacted an amendment to the constitution. On August 11, 2016 Zambians voted to include a revised Bill of Rights that would have made headway in incorporating into domestic law the provisions of CEDAW and amend constitutional article 79, which dictates the process of future constitutional amendments. This referendum was not successful due to voter turnout below the 50 percent that is required for these provisions to be changed. This means that discrimination under personal and customary law is still allowed under the “carve-out” provision.

Recommendations:

- Make human rights due diligence a legal requirement for all registered agricultural companies;
- Expand and clarify the issue of community consultation in the land conversion process, including the involvement of women;
- Make dispute resolution services accessible to men and women community members, in terms of location, costs, language and procedures;
- Enhance the capacity and capability of the Lands Tribunal to be present at provincial and possibly district level to provide a flexible mechanism through which aggrieved people can seek redress;
- Make investor/investment information public and accessible, and strengthen independent monitoring of investor actions;
- Disseminate and enforce the National Resettlement Policy and require a resettlement or compensation plan for all development projects that involve displacing residents;
- Train government officials at all levels relevant to land on the National Resettlement Policy and its accompanying Resettlement and Compensation Guideline;
- Enhance coordination between ministries and government bodies relevant to land, women, investment, agriculture, labor rights and environmental protection;
- Revise article 23 of the constitution, which effectively permits discrimination in a wide number of instances???, and prohibit all forms of discrimination in conformity with Zambia’s international legal obligations.

IV. Sexual Orientation and Gender Identity

Zambian authorities arrested at least six people between 2013 and 2015 on charges related to sexual orientation or gender identity. One of them, activist Paul Kasonkomona, was arrested in April 2013 and charged with “soliciting for immoral purposes” after calling for the decriminalization of same-sex conduct during a television interview. He was acquitted in 2014. The other five individuals were charged with “carnal knowledge against the order of nature,” which is punishable by 15 years to life in prison. All five were subjected to forced anal examinations, a globally discredited method of “proving” same-sex conduct. Forced anal examinations are a form of cruel, degrading, and inhuman treatment that can rise to the level of torture. Four were acquitted, but one was convicted in 2015, in part based on a medical report of the forced anal examination. Even if such laws are rarely enforced, they have a considerable discriminatory impact on the lives of those subject to them.

Recommendations:

- Zambia should revoke articles 155, 156, and 158 of its penal code, which criminalize consensual same-sex conduct with penalties of five years to life in prison;
- While articles 155, 156 and 158 of the penal code remain in effect, the government should order a moratorium on arrests for consensual same-sex conduct, consistent with Zambia's treaty obligations to protect the rights to privacy and non-discrimination;
- Zambian authorities should ban the use of anal examinations on men and transgender women accused of consensual same-sex conduct. Action should be taken at several levels to ensure that the practice is eliminated;
- Zambia's Director of Public Prosecutions should not prosecute anyone for exercising their right to freedom of expression, including for statements in support of the rights of sexual and gender minorities.

V. Acceptance of International Norms

Zambia ratified the Rome Statute of the International Criminal Court (ICC) in 2002. During its 2012 UPR, Zambia accepted recommendation 103.18, which includes completing the process of full alignment of its national legislation with all obligations under the Rome Statute of the ICC.¹⁰

Recommendations:

- Zambia should implement the Rome Statute through national legislation, including by incorporating provisions to cooperate promptly and fully with the ICC, and to investigate and prosecute genocide, crimes against humanity and war crimes before its national courts in accordance with international law.

¹⁰Human Rights Council, A/HRC/22/2, Paras. 677, 702 (advanced unedited version). *Recommendation 103.18 Complete the process of full alignment of its national legislation with all obligations under the Rome Statute of the ICC and accede to the Agreement on Privileges and Immunities of the Court*